House Calendar No. 231

104TH CONGRESS, *2d Session* } HOUSE OF REPRESENTATIVES { REPORT 104–598

PROCEEDINGS AGAINST JOHN M. QUINN, DAVID WATKINS, AND MATTHEW MOORE (PURSUANT TO TITLE 2, UNITED STATES CODE, SECTIONS 192 AND 194)

MAY 29, 1996.—Referred to the House Calendar and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

REPORT

of the

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

CITING JOHN M. QUINN, DAVID WATKINS, AND MATTHEW MOORE

together with

ADDITIONAL and DISSENTING VIEWS

H. RES.

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of John M. Quinn to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of David Watkins to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of Matthew Moore to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

EXECUTIVE SUMMARY

A. Introduction

Weeks after the firings of seven longtime White House Travel Office employees, President William J. Clinton staved off a congressional inquiry into this growing controversy by committing to House Judiciary Committee Chairman Jack Brooks on July 13, 1993:

> . . . you can be assured that the Attorney General will have the Administration's full cooperation in investigating those matters which the Department wishes to review.

No mention then of executive privilege from the President on withholding documents from investigators. The President repeated his promise of cooperation in January 1996 when he stated:

> We've told everybody we're in the cooperation business . . . That's what we want to do. We want to get this over with.

In just over a year after the President's initial assurances of cooperation, the President's own appointee as chief of the Justice Department's Office of Public Integrity, Lee Radek, complained in a September 8, 1994 memo to Acting Criminal Division chief Jack Keeney:

> At this point we are not confident that the White House has produced to us all documents in its possession relating to the Thomason allegations . . . the White House's incomplete production greatly concerns us because the integrity of our review is entirely dependent upon securing all relevant documents.

At this juncture, the Committee is also gravely concerned by the White House's "incomplete production."[1] Like the Justice Department's Public Integrity Section before us, the "integrity of our review" is at stake as the White House continues to withhold relevant documents. The credibility gap of the White House has also grown as we have progressed in this investigation.

It is never appropriate for the subject of an inquiry to determine what documents shall or shall not be turned over or identified in a privilege log. Particularly in this matter where the individuals in the Counsel's office who are withholding documents may also be the authors of some of the documents withheld, the Committee has

[1] The Committee wishes to acknowledge the efforts of those who have helped prepare this report: Kevin Sabo, General Counsel, Barbara Olson, Chief Investigative Counsel, Barbara Comstock, Investigative Counsel, and David Jones, Joe Loughran, Kristi Remington, and Laurie Taylor of the investigative staff. The Committee also appreciates the valuable assistance provided by Morton Rosenberg, Esq. of the Congressional Research Service.

a compelling interest to seek a complete compliance with its bipartisan subpoenas. Those who are the subject of an investigation are hardly objective in determining what is relevant to a congressional oversight investigation. Yet past Travelgate investigations have been thwarted by a White House Counsel's office intent on doing just that while delaying and denying the production of documents. As these facts are brought to light, White House operatives change the subject, attacking the Committee because it continues to shine a light on White House actions long after other investigators gave up trying.

The Administration's resistance to oversight in this matter began almost immediately after the firings and demonstrates the culture of secrecy that has become its hallmark. In notes dated May 27, 1993, White House Management Review author Todd Stern wrote,

> Problem is that if we do any kind of report and fail to address those questions, the press jumps on you wanting to know answers; while if you give answers that aren't fully honest (e.g., nothing re: HRC), you risk hugely compounding the problem by getting caught in half-truths. *You run the risk of turning this into a cover-up.* (emphasis added)

This White House embarked on an unmistakable course which frustrated, delayed, and derailed investigators from the White House itself, the GAO, the Federal Bureau of Investigation, and the administration's own Justice Department Office of Professional Responsibility and Public Integrity Sections. That is what has brought the Committee to this unfortunate impasse.

This White House simply refuses to provide this Committee with the subpoenaed documents that will help us bring this Travel Office investigation to a close, something that I have sought to do for nearly three years. Documents inexplicably have been misplaced in "stacks," or "book rooms" or storage boxes, where they languished for months if not years, despite subpoenas and document requests from numerous official investigative bodies.

If President Clinton responds to investigations of supposedly minor internal problems this way, how does he handle far more serious national and international matters? This administration's culture of secrecy could have disastrous consequences where critical national policy matters involving foreign affairs are concerned. Let there be no misunderstanding. What we have before the Committee should not be the issue of a constitutional confrontation. This Committee seeks no records pertaining to the national security. This is not Bosnia. This is not Iran. International relations are not at stake.

When the White House, as in the case here, fails to comply fully with investigations mandated by Congress or senior Justice Department officials, the oversight role critical to our system of checks and balances is compromised and it is incumbent upon this Committee to assert and to uphold its jurisdiction and congressional prerogatives.

In the course of the Committee's investigation, such documents as the Watkins "soul cleansing" memo and a Watkins letter to the First Lady "appeared" for the first time even though both documents were created, requested and subpoenaed years ago. Testi-

mony by a former White House attorney and a present White House official demonstrated that while this document was discussed between and among at least three White House officials, it never was produced in any prior document productions. A Travel Office notebook kept by the late Deputy Counsel Vince Foster was withheld from relevant investigators, including the Independent Counsel, for two years. The Committee's attempt to question one witness about a belatedly discovered document was met with an assertion of executive privilege when Committee Counsel questioned the witness about conversations she had with the White House Counsel's office. [2]

These documents, and many others, never were provided to previous investigations. They were provided to this Committee only months after the Committee began seeking responsive documents and long after the White House Counsel assured the Committee that it had received almost all substantive documents. This raised concerns with the Committee that the same White House stonewalling that had compromised previous investigations once again was occurring with the Committee's investigation. The Committee issued bipartisan subpoenas in January 1996, after it determined that it was essential to obtain all documents, including those regarding the White House responses to previous investigations as well as the Committee's own investigation, due to the consistent pattern of stonewalling over the past three years. In addition, throughout the course of the Committee's investigation, White House Counsel was in regular contact with counsel for former and present White House employees and in one case even contacted a witness who had agreed to a Committee interview. The interview was canceled following the White House contact.

White House Counsel John M. Quinn, the primary subject of this Committee's contempt proceeding, informed the Chairman in a meeting on May 8, 1996, that he had not even begun gathering the documents at issue. The gathering of these documents, and the invocation of the procedures outlined in the Reagan memorandum, should have begun long before the May 9, 1996, business meeting at which the Committee voted Mr. Quinn in contempt of Congress. In fact, Mr. Quinn's statements are at odds with a February 1, 1996, memo that Mr. Quinn himself sent to all staff of the White House regarding the subpoena from this Committee. In the memo, Mr. Quinn detailed all of the items on the Committee's subpoena and directed staff to produce all "responsive records that fall within the above categories" by February 7, 1996, to Elena Kagan, an Associate Counsel in Mr. Quinn's office. Mr. Quinn also had sent a memo on December 19, 1995 to gather documents.

In an August 23, 1995, letter to the Committee, the White House said that document production timetables suggested by the Committee—documents produced within 15 days and privilege logs within five days—were "reasonable goals." The Committee sent its first document request on June 14, 1995, after a long correspondence with the White House concerning the Travel Office matter. Our second request was sent on September 18, 1995. Bipartisan subpoenas were issued on January 11, 1996. We have gone far be-

[2] See Deposition of Carolyn Huber.

yond what the White House itself acknowledges was "reasonable." Yet, now, the White House, in my view, is trying to further delay producing these documents or avoid doing so altogether.

The compliance date for the subpoenas was more than three months ago. The time for the White House Counsel to seek to avoid contempt has come and gone. The White House neither has complied with this Committee's subpoenas nor has it offered a legally rational basis for its refusal to comply.

It is troubling that the President of the United States persists in his efforts to cover-up a scandal having no connection with any national security or vital domestic policy issue. In the final analysis, the Travel Office matter reflects the character of the President and his presidency.

B. Background

Since the controversial firings of the longtime White House Travel Office employees, the history of the investigations into what has become known as "Travelgate" has been one of a White House intent on keeping investigators at bay and relevant documents under wraps. While this Committee has succeeded in obtaining far more information and records than has any previous investigation into the Travel Office firings, the record is still incomplete because of the insistence of the President to withhold documents from the American public by taking the extraordinary step of invoking an undefined, vague, and ultimately ineffective protective assertion of executive privilege. [3]

This Committee has a compelling need for the disputed documents to obtain a complete record of events related to the Travel Office matter in order to resolve the issues as to how and why previous investigations did not meet with White House cooperation. The subpoenaed records are necessary for the Committee to resolve by direct factual evidence, fundamental factual questions relating to the actions, direction, knowledge, recommendations, or approval of actions by individuals in the White House, in responding to the allegations about the Travel Office employees as well as the subsequent investigations into the White House Travel Office matter. This report will outline in great detail a pattern of activity by this Administration to deny and delay access to relevant records to several investigative bodies, including this Committee.

It has been White House policy since the Kennedy Administration not to invoke executive privilege when there are allegations of criminal wrongdoing at issue. Certainly that is the case here. Already there has been a criminal referral concerning statements made by David Watkins, a former White House senior official. Further, the Independent Counsel has had his jurisdiction expanded to encompass the Travelgate matter. In light of that expansion, the actions of the White House are particularly troubling.

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[3] As will be discussed in this report, the President has not submitted a formal assertion of executive privilege to this Committee. Instead, on the morning of the Committee's vote, the Counsel to the President informed the Committee that he had been instructed by the President to assert executive privilege as a protective measure until such time as his advisors could collect and review the documents in dispute. The Committee has obtained a February 1, 1996, memo addressed to all White House staff from White House Counsel Jack Quinn requesting receipt of all subpoenaed documents by February 7, 1996. Mr. Quinn's current statement that he needs more time to gather the requested documents appears to be at odds with the documentary record.

President Reagan, for example, waived all claims of executive privilege during the Iran-Contra investigation. Attorney General William French Smith, who generally proposed a very broad theory of executive privilege during his tenure, even admitted that he would not try "to shield documents [from Congress] which contain evidence of criminal or unethical conduct by agency officials from proper review."[4]

More than a century ago, even President Andrew Jackson, "a jealous defender of executive prerogatives, told Congress that if it could point to any case where there is the slightest reason to suspect corruption or abuse of trust, no obstacle which I can remove shall be interposed to prevent the fullest scrutiny by all legal means."[5]

The lengthy record established by the Committee, and detailed in this report, demonstrates concerted efforts over a sustained period of time to delay and deny records to investigative bodies. In refusing to produce the outstanding records to this Committee, the President, substituting his judgment as to what materials are necessary for the inquiry, has placed the full executive powers of the Presidency against the lawful subpoenas of the U.S. House of Representatives.

On June 1, 1993, Congressman William F. Clinger, Jr., then the ranking minority member on the House Committee on Government Operations, called on the Committee to investigate the chain of events which resulted in the termination of seven hard-working White House Travel Office workers.[6] These Travel Office employees, many of whom had worked for numerous Presidents over the course of three decades, summarily were fired and driven from the White House. One employee learned of his termination by watching CNN in a hotel while he was on government travel. Another worker learned that he was fired from his son, who had watched a network news program.

Not only did the White House fire these workers, it claimed to the national media that the Federal Bureau of Investigation (FBI) was conducting a criminal review. Shortly thereafter, the airline company providing charter service to the Travel Office was served a summons by the Internal Revenue Service (IRS) and subjected to a two-and-one-half-year audit. Coincidentally, a senior White House aide had warned the FBI just days earlier that if the FBI did not assist the White House in this matter, the IRS would be called.

Over the next several weeks, Congressman Clinger's call for an investigation was repeated throughout the U.S. Senate and House.

Unfortunately, the "full cooperation" promised by the President never was forthcoming. Numerous records of what occurred at the Travel Office never were provided appropriately to the Justice Department or any other investigative organization. Five separate in-

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[4] Letter of November 30, 1982, to Congressman John Dingell, reprinted in H. Rep. 968, 97th Cong., 2d Sess. 41 (1982).

[5] Fisher, Louis, *Constitutional Conflicts between Congress and the President,* p. 205.

[6] After nearly three years of seeking cooperation in this investigation, Chairman Clinger has afforded White House Counsel John M. Quinn, David Watkins, and Matthew Moore every opportunity to produce the records which were subpoenaed in January 1996. At the Chairman's request, the Congressional Research Services' American Law Division has submitted an analysis to the Committee reviewing the legal steps required to hold an individual in contempt of Congress under 2 U.S.C. Sections 192 and 194. This analysis is provided in Appendix 1.

vestigations were conducted into one aspect or another of the Travel Office firings. The only consistency between each of these five previous investigations was that the White House was successful in its attempts to delay and deny production of many relevant documents. The Justice Department's Public Integrity Section complained in an internal memorandum that material records were withheld during the course of its review. The General Accounting Office (GAO), conducting an investigation requested by a statute signed by President Bill Clinton, was denied vital records after months and months of requests. Recently, the GAO referred a former senior White House aide to the Justice Department for prosecution for providing false information.

By January, 1995, Congressman Clinger was the chairman of the new House Committee on Government Reform and Oversight. He announced that a thorough investigation into the growing Travel Office scandal would be forthcoming. Beginning on June 14, 1995, the Committee submitted document requests to the White House. The White House took months to respond to a subsequent September 18, 1995 document request, acknowledged in correspondence in August 1995 that a two week response time to document requests was a reasonable goal. The Committee was assured in October 1995 that almost all of the substantive records had been provided.

Three hearings were held and bipartisan subpoenas were issued when documents repeatedly were delayed and denied to the Committee. Specifically, on January 11, 1996, Chairman Clinger authorized and issued subpoenas under authority granted to him by House Rule XI, clause 2(m) and Committee Rule 18(d). These subpoenas were issued, inter alia, to the Custodian of Records at the White House,[7] and David Watkins,[8] and Matthew Moore,[9] personally. Negotiations over access to records began. The White House continued to "locate" previously requested documents and to produce groupings of documents without articulating any credible reason why they had been withheld until that point.

Finally, on March 15, 1996, the White House made a small production of documents pursuant to the Committee's subpoena that included yet another previously unproduced Watkins handwritten letter to Mrs. Clinton dated May 3, 1994. An explanation for the White House's failure to produce this document for nearly two years during the course of numerous other document requests and subpoenas finally was proffered by the White House on April 5, 1996. Assistant to the President and White House Counsel John M. Quinn responded only that it was located in a stack of unsorted, miscellaneous papers and memorabilia in the Office of Personal Correspondence after having been forwarded to Presidential Assistant Carolyn Huber by the First Lady.[10]

On May 2, 1996, Chairman Clinger formally notified Counsel to the President John M. Quinn, Attorney General Janet Reno, and

[7] The subpoena issued to the Custodian of Records at the White House was received by Jane Sherburne, Special Counsel. The documents in question are in the custody and control of John M. Quinn, White House Counsel. A copy of the subpoena issued to the Custodian of Records is provided in Appendix 2.

[8] A copy of the subpoena issued to David Watkins is provided in Appendix 3.

[9] A copy of the subpoena issued to Matthew Moore is provided in Appendix 4.

[10] During a Committee deposition with Carolyn Huber on April 23, 1996, the Committee was notified that the White House had instructed Ms. Huber to assert executive privilege over any communications with the White House Counsel's office.

former White House aides David Watkins and Matthew Moore that they were not in compliance with subpoenas issued by the Committee in early 1996 and were subject to be held in contempt of Congress. The Attorney General resolved issues of outstanding records with the Committee prior to the May 9, 1996 compliance date. In a letter to Mr. Quinn, Chairman Clinger stated:

> I have reviewed all of our numerous communications and correspondence regarding compliance with our subpoenas and am frankly amazed that we are still seeking full production more than three months after the stated due date * * * I am advised that the White House has also intervened with individuals who were subpoenaed by this Committee by requesting that such individuals send their documents to the White House rather than directly to the Committee.
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> The White House's continued foot dragging and obfuscation as the Committee attempts to bring closure to this investigation must come to an end. Accordingly, I am calling in all documents responsive to our subpoenas of January 11, 1996, to be delivered by close of business on May 8, 1996 * * * I have scheduled a meeting of the Committee on Government Reform and Oversight for the morning of May 9, 1996 to resolve these and other outstanding document issues. At that time, I will request a Committee vote to compel the production of outstanding records under penalty of contempt.[11]

Unfortunately, the White House response was typical of the dealings the Committee has experienced with the Clinton Administration since 1993. In a May 2, 1996, letter addressed to Chairman Clinger, Mr. Quinn hid behind the presidential election season in an attempt to blunt the Committee's legitimate investigation. No explanation was provided as to why the White House had yet to provide the Committee with a privilege log or why documents still were being produced three months after the due date of the subpoena. Significantly, Mr. Quinn cited no legal basis or any case law in support of withholding subpoenaed documents.

On the morning of May 3, 1996, Mr. Quinn spoke to Chairman Clinger by telephone in an attempt to reach a consensus on the documents or at least delay the Committee's actions. Chairman Clinger informed Mr. Quinn that it would be helpful to have a better understanding of the nature of the documents in dispute, which is why the Committee requested a privilege log. Mr. Quinn stated that he would try to produce such a document.

On the evening of May 3, 1996, Mr. Quinn telecopied a letter to Chairman Clinger which cryptically described the contents of the disputed records. No privilege log was provided. Mr. Quinn described the disputed documents as follows:

> 1. Documents relating to ongoing grand jury investigations by the Independent Counsel;

[11] A copy of the Committee's business meeting notice and draft copy of the House Resolution citing the respective individuals for contempt were included with the letter.

2. Documents created in connection with Congressional hearings concerning the Travel Office matter; [12] and

3. Certain specific confidential internal White House Counsel office documents including "vetting" notes, staff meeting notes, certain other counsel notes, memoranda which contain pure legal analysis, and personnel records which are of the type that are protected by the Privacy Act.[13]

Chairman Clinger responded to Mr. Quinn on the morning of May 6, 1996, to remind him that the Committee was seeking internal deliberative documents due to the pattern of conduct established by the Counsel's office in previous investigations. The documents identified in the three categories by Mr. Quinn are needed by this Committee to resolve the questions surrounding the White House Counsel Office's involvement in prior investigations. It would be irresponsible for this Committee to allow the subject of an inquiry to determine what documents shall or shall not be shared with Congress.

In his letter to Mr. Quinn, Chairman Clinger stated:

> When I met with you on February 15, 1996, you presented an offer to resolve our ongoing document dispute by providing the Committee with limited access to some of the disputed materials as long as we surrender our right to demand the remaining categories of documents. If we refused your offer, I understood, the entire "basket" of disputed documents would be withheld and our disagreement would continue. This was presented as your final offer. . . . The effective result of my letter of May 2, 1996, was to formerly reject your offer and notify you that a determination was reached concerning the withheld documents.

Chairman Clinger offered Mr. Quinn the opportunity, in another letter dated May 7, 1996, to draft a statement to the Committee addressing any valid executive privilege assertions in order to explain to the Committee why he should not be held in contempt of Congress for his failure to produce subpoenaed documents.

The Committee is determined to ensure that the Clinton Administration does not succeed in its attempt to limit Congress' Travel Office investigation as it has done with every preceding investigation. The issuance of subpoenas was not sufficient to ensure the production of all relevant records. Unfortunately, it is necessary to take the serious step of holding parties who fail to produce requested documents in contempt.

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[12] This Administration has followed a long history of providing congressional committees with documents created in connection with congressional hearings. See, Morton Rosenberg, *"Legal and Historical Substantiality of Former Attorney General Civiletti's Views as to the Scope and Reach of Congress' Authority to Conduct Oversight of the Department of Justice,"* CRS, October 15, 1993, in *"Damaging Disarray: Organizational Breakdown and Reform in the Justice Department's Environmental Crimes Program,"* Staff Report of the Subcom. on Oversight and Investigations, House Committee on Energy and Commerce, 103rd Congress, 2d Session, 321–350, Comm. Print No. 103–T, 1994.

[13] This vague, broad and non-descriptive category of withheld documents, if accepted by the Committee, would be tantamount to accepting a type of broad, undifferentiated claim of executive privilege which was rejected by the court in *U.S.* v. *Nixon,* 418 U.S. 683 (1973).

C. Importance of oversight of the White House

From the earliest days of our government, courts have recognized "the danger to effective and honest conduct of the Government if the legislature's power to probe corruption in the executive branch were unduly hampered."[14] In *McGrain* v. *Daugherty*,[15] the Court described the power of inquiry, with the accompanying process to enforce it, as "an essential and appropriate auxiliary to the legislative function." As Senator Sam Ervin noted 25 years ago:

> When the people do not know what their government is doing, those who govern are not accountable for their actions—and accountability is basic to the democratic system. In effect, those who govern are insulated from the effects of their actions, and the populace is precluded from obtaining the knowledge that is necessary to control the actions of the government in the manner envisioned by the Founding Fathers.[16]

Congressional oversight is an essential tool in holding the Executive Branch accountable for its actions. When oversight is conducted into possible inappropriate activity at the White House, this concept of accountability is particularly important. Unlike all other federal agencies, the White House has no Inspector General. The highest office in the land cannot be held to a lower standard of accountability. Vigorous oversight of the Executive Branch must not be thwarted if we are to preserve our trust in the highest office of the land.

Finally, lest there be any misunderstanding of the appropriateness of public disclosure of certain materials under the proper circumstances, it must be remembered that the informing function is one of the manifold responsibilities of Congress in conducting oversight. As Woodrow Wilson wrote:

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees . . . Unless Congress has and uses every means of acquainting itself with the acts and the disposition of the administrative agents of the Government, the country must be helpless to learn how it is being served . . . The informing function of Congress should be preferred even to its legislative function. The argument is not only that a discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration . . . [17]

D. Committee action

The subpoenas issued in early January 1996, were not complied with on the return date of January 22, 1996, or any subsequent

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[14] *Watkins* v. *United States*, 354 U.S. 178 (1957).
[15] 273 U.S. 135, 174–175 (1927).
[16] *"Executive Privilege: The Withholding of Information by the Executive."* Hearings before the Subcommittee on the Separation of Powers, Senate Judiciary Committee, 92nd Congress, 1st Session (1971), p.4.
[17] 354 U.S. at 200, Footnote 33.

date thereafter. On Thursday, May 9, 1996, the Committee met in open session at 10:00 a.m. in Room 2154 Rayburn Office Building for the purpose of determining what action should be taken in view of the failure of White House Counsel John M. Quinn, former White House aide David Watkins, and former White House aide Matthew Moore, to comply with the subpoena. The Committee, a quorum being present, on a record vote of 27–19, recommended the adoption of a resolution as follows:

> *Resolved,* That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of John M. Quinn to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further
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> *Resolved,* That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of Matthew Moore to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

If the House of Representatives failed to pursue all legal steps to vindicate its right to this information, it would undermine severely this investigation into the facts surrounding the termination of the seven innocent Travel Office employees. Accordingly, the Committee voted to report to the House a contempt resolution for John M. Quinn, David Watkins, and Matthew Moore. Upon adoption by the House, the resolution would direct the Speaker to turn the matter over to the U.S. Attorney for prosecution in accordance with 2 U.S.C. sections 192 and 194. That offense carries a maximum sentence of 1 year in prison, plus fines.

This report will summarize the events which occurred before and after the seven Travel Office workers were fired on May 19, 1993, including the history of official investigations and the current dispute over records. Also provided is a chronology of what this Committee considers to be stonewalling on the part of White House officials as part of their efforts to deny and delay official investigative bodies access to pertinent records. The Committee report also discusses in detail the various claims made by the condemners to justify their denial of the requested information and a chronology of the correspondence that has transpired between the Committee and White House officials during the past three years. Appendices

include a Congressional Research Service legal opinion and copies of the relevant subpoenas.

FINDINGS

1. The Committee on Government Reform and Oversight has the jurisdiction and authority, pursuant to House rule X, 1(g) and XI, 2(m)(2) to conduct an investigation into the White House Travel Office matter and the subsequent investigations of this matter and to require the production of documents by the White House, the Department of Justice and individuals who have withheld documents.

2. White House Counsel John M. Quinn's letter invoking an undifferentiated protective executive privilege assertion over a vaguely defined group of documents of unknown quantity and substance at the direction of the President is an ineffective invocation of the privilege under the guidelines established by President Ronald Reagan and adopted by President Bill Clinton.

3. White House Counsel John M. Quinn's refusal to turn over subpoenaed records, issued with bipartisan agreement, or to properly invoke a valid claim of executive privilege has needlessly provoked a constitutional confrontation. The White House has unnecessarily strained our system of government and interfered materially with the ability of Congress as well as prior investigative bodies to fulfill oversight responsibilities in a timely fashion.

4. The Attorney General has provided no legal opinion to support the President's blanket undifferentiated protective invocation of privilege. In fact, during her tenure, the Attorney General has turned over documents similar to some of those sought in the present matter when dealing with prior Congressional investigations.

5. A disclosure of arguably privileged documents to a congressional committee pursuant to a subpoena and the threat of citation of contempt would not waive the claim of privilege in any other forum.

6. The assertion of attorney-client and work product privileges by David Watkins and Matthew Moore with respect to withheld drafts of the Watkins" "soul cleansing" memo are without legal foundation. There is no credible evidence that Watkins established an attorney-client relation with Moore; and even if established, it was waived by its disclosure to Patsy Thomasson, other White House personnel, and to the media upon its discovery in Thomasson's files. The failure to maintain confidentiality also waives any claim under the work produce doctrine.

7. The ongoing criminal investigation by the Independent Counsel into the White House Travel Office matter and the criminal referral of a high ranking White House official who was centrally involved in this matter makes the withholding of documents particularly troubling. President Bill Clinton has altered a policy in effect since the Kennedy Administration. The operative policy has always been to refuse to claim executive privilege when allegations of wrongdoing are at issue.

8. Despite White House claims to the contrary, the unknown quantity and substance of undefined documents withheld are directly relevant and necessary to the Committee's inquiry into the response by the White House to the various investigations over the

past three years as well as the dilatory responses to this Committee.

9. The White House's statements about the large quantity of documents produced and its self-serving pronouncements regarding compliance do not amount to responsiveness to either the Committee's needs or the bipartisan subpoenas. Congress makes the determination of what documents are necessary for an investigation; the President does not make that determination.

10. The examples of extensive delays by the White House to this and all previous investigations detailed extensively in the record contradict White House statements that it accommodated and cooperated with this or previous investigations into the Travel Office matter. Numerous government officials as well as this Committee concluded the White House has behaved in a dilatory manner when responding to matters related to the White House Travel Office investigation.

11. The White House has made misleading statements in describing some of the withheld documents suggesting alternatively that the number of documents withheld was "small" at first. The Attorney General claims there is a "large" group of documents to review for executive privilege assertion.

12. Despite extensive efforts by the Committee to engage in voluntary document production, the White House engaged in a long-drawn-out and selective documents production only as this Committee applied increasing pressure or as outside sources came forward with similar information.

FACTS, BACKGROUND, AND FINDINGS

A. President Terminates Employment of Seven Career Travel Office Workers

At approximately 10:00 a.m., on May 19, 1993, all seven members of the White House Travel Office staff summarily were fired. The five Travel Office employees present in the White House that day were ordered to vacate the White House compound within two hours. Returning to their Travel Office by 10:30 a.m., the fired Travel Office employees found their desks already occupied by employees of World Wide Travel, the Arkansas travel agency which arranged for press charters during the Clinton presidential campaign.

Two White House Travel Office employees were absent from the White House Travel Office on May 19, 1993, one on a White House advance trip to South Korea, the other on vacation. They learned of their firings, respectively, via CNN telecast and from a son who saw Tom Brokaw announce the firings on network news that night. The seven White House Travel Office employees had served from 9 to 32 years in the White House Travel Office.

The five Travel Office employees who were present in the White House for their firings ultimately were given additional time to complete their White House out-processing. By early afternoon, they heard then-White House Press Secretary Dee Dee Myers announce at a press briefing that they were the subject of an FBI criminal investigation. They had been given no such indication at the time of their dismissals. After completing the out-processing,

the five Travel Office employees present on May 19, 1993, were driven out of the White House compound in a panel van with no passenger seats, seated only on their boxes of personal belongings.

It subsequently was revealed that the events precipitating the Travel Office firings had intensified almost a week before, on May 13, 1993, when Associate White House Counsel Bill Kennedy summoned the FBI to the White House. He informed the FBI that those at "the highest level" in the White House wanted prompt action on a matter allegedly involving financial wrongdoing. The FBI dispatched two sets of agents to consider jurisdictional issues. The first pair tried to tell their superiors they weren't the "right guys for the job," recommending that a field agent be sent per standard procedure. Mr. Kennedy was "adamant" that headquarters personnel with a "national perspective" be involved. Senior FBI officials complied, sending the acting chief of the Violent Crimes and Major Offenders section to the White House Travel Office.

The second set of FBI agents met with Catherine Cornelius, the President's cousin, on May 13, 1993. David Watkins had dispatched Ms. Cornelius to the Travel Office, where she copied and removed documents. In the wake of Ms. Cornelius' own meetings with Mr. Harry Thomason, a Hollywood producer and longtime friend of the President and the First Lady, allegations of kickbacks and expensive lifestyles were raised against the Travel Office employees. The FBI accepted Ms. Cornelius' recitation of these otherwise unsubstantiated allegations as sufficient predication to launch a criminal investigation.

Even as the FBI informed the White House it had sufficient predication to launch an investigation on May 13, 1993, the White House Counsel's office shifted gears, informing the FBI agents that the White House first would conduct an outside audit, and later allow the FBI to proceed with an investigation if one were warranted. The FBI insisted it should be present at the Travel Office during the audit but Deputy White House Counsel Vince Foster and Mr. Kennedy overruled it. The FBI acquiesced.

On May 14, 1993, the White House brought in an "independent auditor" who was in fact neither independent nor an auditor. The management consulting (not the public accounting) arm of KPMG Peat Marwick was engaged to conduct a management review. KPMG Peat Marwick's engagement letter, draft and final reports all stated that it was not asked to and indeed did not conduct the procedures necessary for an "audit, examination or review in accordance with" established accounting standards.

On Monday, May 17, 1993, Mr. Watkins wrote a memo to Chief of Staff Thomas F. (Mack) McLarty regarding the planned Travel Office firings. Mr. Watkins copied this memo to the First Lady. The memo was telecopied to Director of Media Affairs Jeff Eller, who was traveling with the President in California. Mr. Eller discussed the memo with presidential advisor and confidant Bruce Lindsey. White House Management Review notes indicate that Mr. Lindsey discussed the memo with the President in California.

Well before the final KPMG Peat Marwick report was written, the White House decided to fire the Travel Office employees on Wednesday, May 19, 1993, and so advised the FBI. The FBI warned that the firings would harm the investigation it initiated

on May 14, 1993, but the White House ignored its concerns and, once again, the FBI and Justice Department acquiesced.

After the Travel Office firings were announced at a May 19, 1993, press briefing, KPMG Peat Marwick partner Larry Herman was ushered into a meeting with George Stephanopoulos, Dee Dee Myers, Vince Foster, Bill Kennedy, Ricki Seidman and Harry Thomason and greeted with the question, "Where the hell is the report?" The White House had only a few pages of draft material when it announced the firings it said were based on the KPMG Peat Marwick report. The press repeatedly asked for the report in the May 19, 1993 press briefing.

Both the President and First Lady were informed of the Travel Office matter prior to the May 19, 1993 firings. Harry Thomason, Vince Foster and David Watkins appear to have advised the First Lady regularly about Travel Office particulars. Harry Thomason worked at the White House late into the night on May 13, 1993, and Mr. Foster's Travel Office file indicates the First Lady received updates from both Mr. Foster and Mr. Watkins that evening. Other White House notes reveal that Mr. Thomason also had conversations with the First Lady about the firing of the Travel Office employees. Talking points had been prepared for May 13th stating that Travel Office employees had been fired that day and that the FBI was performing an audit of the Travel office.

Mr. Thomason was back in the White House on May 14, 1993, and throughout the following week. During the course of a World Wide Travel employee's White House Management Review interview, Fan Dozier told John Podesta she had talked with Mr. Thomason on May 16, 1993, and Mr. Thomason said, "you mean you're not up there working [in the Travel Office]?" and added that he would call the First Lady and she would be very upset to hear that World Wide Travel was not already in place.

Mr. Thomason told White House staff that he learned the Travel Office employees were accepting "kickbacks" from friends in the air charter industry. He told Mr. Watkins he spoke to the First Lady about the matter and that she was anxious to get "our people" into the office because "we need the slots." Mr. Thomason told Mr. Watkins, Mr. Foster and others that firing the employees would be a "good story." When White House staffer Jennifer O'Connor asked him if he had any evidence, Mr. Thomason said he did.

In fact, although the President later claimed in a press conference that he had heard rumors everywhere, it appears that Mr. Thomason and Ms. Cornelius were the primary, if not the sole sources of allegations against the Travel Office employees reaching the White House. Meanwhile, Mr. Thomason was involved in a number of other activities at the White House.

"Put me in front of the right person at the White House and I will prove the value of both the project and Thomason's capabilities," Darnell Martens wrote Harry Thomason, his business partner in Thomason, Richland and Martens, Incorporated ("TRM"). Subsequent memos referred to "a memo to Harry Thomason which was presented to and discussed with the President in mid-February" and a request indicating the President needed to "issue an executive order" and "enter into a consulting agreement with TRM" to get projects for TRM, Incorporated going.

Mr. Thomason spoke both with President Clinton and presidential confidant Bruce Lindsey about obtaining their assistance in his efforts to win a sole source government contract at GSA to audit the entire federal civilian aircraft fleet and "revitalize" the aircraft industry. Mr. Martens, who like Mr. Thomason had received his own White House pass, secured OMB and GSA assistance for his proposals. The White House claims it pulled the plug on this scheme sometime in the summer of 1993, during the course of the Travel Office investigations. When the scope of his White House influence became controversial, Mr. Thomason said, "I do find it surprising that a person who was as instrumental as I was in the Clinton campaign cannot pick up a phone in the White House and ask for information from people."

Ms. Cornelius was "selected" to replace seven veteran Travel Office employees. She followed directions given by David Watkins and brought in World Wide Travel without a competitive bid. World Wide, the Clinton/Gore campaign's travel agency, withdrew from the White House within two days of their arrival in the wake of intensive press scrutiny.

Within days of the Travel Office firings, the media reported that Mr. Thomason had telecopied an undated memo by Mr. Martens to the White House on May 10, 1993, which contradicted their claims of having no interest in Travel Office business. The memo in fact discussed efforts by Mr. Martens to seek the business. It was reported that Ms. Cornelius had proposed in a February 15, 1993, memorandum that she be placed in charge of the Travel Office, assuming a role she had in the Clinton campaign. White House documents indicate that when the Travel Office story broke, Mr. Watkins and Patsy Thomasson asked Ms. Cornelius and a second employee to lie about the February 15, 1993, memo by saying that Mr. Watkins never read it.

Mr. Martens summoned air charter broker Penny Sample to the White House without a competitive bid. Ms. Sample also had worked on Clinton/Gore campaign travel charters with TRM, Incorporated. The White House claimed that Ms. Sample came on a voluntary basis but after she received what was touted as "erroneous commissions," she was asked to leave the White House.

On May 21, 1993, after World Wide Travel decided to leave the White House, Patsy Thomasson held a closed-door meeting with American Express while Secret Service agents guarded the door, according to White House Management Review notes. Later that day, George Stephanopoulos announced that American Express would be brought into the White House, but the White House subsequently claimed it was putting the contract out to bid. American Express won and entered the Travel Office the following Monday.

Also on May 21, 1993, the Internal Revenue Service raided the Smyrna, Tennessee, offices of UltrAir, a small company which provided most of the Travel Office's domestic press charters and which stood accused by Harry Thomason of participating in kickbacks. Two years after an expensive and distracting investigation, UltrAir was cleared of any wrongdoing. A former UltrAir executive who also was audited actually received a $5,000 tax refund.

While the Travel Office employees served at the pleasure of the President, their precipitous firings and replacement by the Clinton

campaign's primary travel agency immediately raised a storm of criticism. Administration claims that it had acted in order to save the press and taxpayers money were met with skepticism by a White House press corps which responded with a litany of complaints of over billing and undocumented charges by World Wide Travel itself throughout the 1992 campaign. In addition, the Clinton Administration's announcement that an FBI criminal investigation had been launched was highly improper and, in fact, questionable when it was announced. Furthermore, Attorney General Janet Reno considered White House contacts with the FBI in the days leading up to and immediately following the Travel Office firings also were considered improperly handled, who publicly admonished the Administration for them.

B. Members of Congress Call for Investigation

Members of the House and the Senate immediately raised concerns about the manner in which the Travel Office firings took place. In the face of press, public and Congressional outcry, the White House placed five of the seven Travel Office employees on administrative leave with pay on May 25, 1993, and announced that it would conduct a White House Management Review of the Travel Office and the Administration's role in the Travel Office firings. The fired Travel Office director and deputy director retired.

On June 1, 1993, William F. Clinger, Jr., the then-ranking minority member of the House Government Operations Committee, requested that then-Chairman John Conyers, Jr., hold hearings on the White House Travel Office firings.

Then-White House Chief of Staff Thomas F. (Mack) McLarty and then-Office of Management and Budget Director Leon Panetta released the White House Travel Office Management Review on July 2, 1993, and announced the reprimands of four White House staffers. Reprimanded were: Associate Counsel to the President, William H. Kennedy, III; Assistant to the President for Management and Administration, David Watkins; former Special Assistant to the President for Management and Administration, Catherine A. Cornelius; and Deputy Assistant to the President and Director of Media Affairs, Jeff Eller. At least three of the four first learned of the "reprimands" during their televised announcement. None of the reprimands were documented in the personnel files of any of the four.

Also on July 2, 1993, the Supplemental Appropriations Act of 1993 (P.L. 103–50) was signed into law requiring the United States General Accounting Office (GAO) to "conduct a review of the action taken with respect to the White House Travel Office."

In addition to the White House Management Review and the GAO Report entitled "White House Travel Office Operations" (Released on May 2, 1994), at least three other reports were prepared concerning various aspects of the White House Travel Office firings. These reports were prepared by: the Office of Professional Responsibility (OPR) of the United States Department of Justice (dated March 18, 1994 and released by the Committee on October 24, 1995); a Federal Bureau of Investigation Internal Review of FBI Contacts with the White House (dated June 1, 1993), and the

Department of Treasury Inspector General Report "Allegation of Misuse of IRS RE: ULTRAIR" (dated June 11, 1993).

The OPR report was initiated on July 15, 1993, by then-Deputy Attorney General Phillip Heymann in an e-mail message to Justice Department aide David Margolis. This report was in response to Congressional pressure for more answers as well as the President's commitment in a July 13, 1993, letter to then-Chairman Brooks of the House Judiciary Committee pledging that he would cooperate fully with any inquiry.

On September 23, 1993, after consultations with majority staff of the Government Operations Committee, Mr. Clinger withdrew his request for Committee hearings on the White House Travel Office firings, "contingent upon the adequacy of the GAO effort" which had been mandated by Congress through P.L. 103–50.

Individually and collectively, the five reports prepared concerning the White House Travel Office left many questions unanswered and, in fact, raised many more. Several Members of Congress, including Mr. Clinger, sought to have these questions answered through further investigation and Congressional hearings. In a letter dated October 7, 1994, Mr. Clinger and 16 other House Members again requested Congressional hearings on the White House Travel Office in order to "address serious questions arising from, or unanswered by, the General Accounting Office (GAO) Report to Congress, White House Travel Office Operations (GAO/GGD–94–132)."

Mr. Clinger's request was accompanied by a 71-page minority analysis of issues unaddressed by any of the previous five reports. This analysis reviewed contradictions concerning: memoranda drafted by Catherine Cornelius outlining its new organizational structure and placing her in charge; activities of Harry Thomason and Darnell Martens; mismanagement by David Watkins; White House reasons justifying the Travel Office firings; contacts between Dee Dee Myers and Darnell Martens; public disclosure of the FBI investigation; possible influence on the FBI; the integrity of Travel Office records; the role of the President; the reprimands, and inaccuracies and insufficiencies in the GAO report on the White House Travel Office. In response to this report, then-Chairman Conyers of the House Government Operations Committee wrote then-Ranking Member Clinger, "You have raised serious questions about GAO's report to Congress" and asked that GAO provide a "detailed response" to Mr. Clinger's concerns. No such response was provided.

C. Committee's Investigation

Soon after the November, 1994, Congressional elections, Mr. Clinger, Chairman of the Government Reform and Oversight Committee of the 104th Congress, announced that he would hold hearings on the White House Travel Office firings. In December, 1994, the Public Integrity Division of the United States Department of Justice indicted former White House Travel Office Director Billy R. Dale on one charge of embezzlement and one charge of conversion.

The Committee conducted interviews and gathered documents from various participants in the Travel Office matter on a voluntary basis throughout the spring and summer of 1995. White House document production, however, proved problematic and led

to numerous meetings, correspondence and phone conversations with Clinton administration representatives in the White House Counsel's Office, the Department of Justice, the Department of the Treasury, and the General Accounting Office.

In the fall of 1995, Chairman Clinger scheduled the Committee's first hearing on the White House Travel Office for October 24, 1995. The hearing focused on the accuracy and completeness of the five White House Travel Office reports and to consider whether further hearings were required to address unanswered issues. The panel at the October 24, 1995, hearing included authors of each of the five reports, respectively. This hearing purposely avoided all areas that might have impacted upon the trial of former Travel Office Director Billy R. Dale which was to commence on October 26, 1995.

The Committee reviewed which of seven key Travel Office issues each report addressed. These issues were: the completeness of the review of references to "Highest Levels" involvement at the White House in the Travel Office firings; whether any assessment of White House Standards of Conduct was performed and whether Administration staffers had violated those standards; whether inquiries were made into the role of Hollywood producer Harry Thomason in the firings; the role of Mr. Thomason and his firm, TRM, Incorporated in seeking contracts involving the Interagency Committee on Aviation Policy ("ICAP"); whether the issue of competitive bidding by the White House Travel Office and by the White House itself in dealing with the Travel Office was reviewed; and whether thorough investigations into FBI and IRS actions and reactions to the White House inquiries had been undertaken.

The hearing made clear that, given limitations on their scopes and limited access to documents and witnesses, none of the reports fully addressed the issues raised by the Travel Office firings. The redactions to the Treasury Inspector General IRS report made it impossible to determine whether the IRS addressed any of the seven issues. The OPR and FBI reports only partially addressed two issues—"FBI actions" and references to "Highest Levels of the White House"—and never addressed the other five. Despite its far greater understanding of the participants and circumstances leading to the Travel Office firings—or arguably because of it—the White House Travel Office Management Review only briefly and superficially addressed Harry Thomason's role, FBI actions and references to "Highest Levels" of the White House while ignoring competitive bidding, IRS action, standards of conduct and ICAP contracts. Similarly, the GAO relied on the White House Management Review in its report on Mr. Thomason's role and only partially addressed FBI actions and "Highest Levels" while leaving ICAP, competitive bidding and standards of conduct unaddressed. IRS disclosure laws prevented the GAO from publicly addressing IRS actions.

The October 24, 1995, hearing also made clear that the GAO and OPR reports were hobbled by what their respective authors referred to as an unprecedented lack of cooperation by the White House in their investigations. It was determined in the hearing that the White House had denied both GAO and OPR documents which were critical to their investigations. Both GAO and OPR

never received many of the documents subsequently produced by the White House to this Committee.

The criminal trial of former Travel Office Director Billy R. Dale began on October 26, 1995, and concluded on November 17, 1995, with Mr. Dale's acquittal of one charge each of embezzlement and conversion after just two hours of jury deliberations. After the acquittal was announced, Chairman Clinger requested that the Public Integrity Section of the Department of Justice turn over all documents related to the criminal prosecution for review by the Committee.

At year-end 1995, the Committee planned hearings on: the role of Mr. David Watkins in the Travel Office firings; the experiences of the seven fired Travel Office employees; the role of Mr. Harry Thomason; and the role of the FBI and IRS. In January 1996, the Committee subpoenaed all of Mr. Thomason's documents related to the Travel Office and filed a "6103 Waiver" with the IRS in which representatives of UltrAir authorized the IRS, Department of Treasury and others to release all relevant documents concerning the IRS audit of UltrAir in the wake of the Travel Office firings. The Department of the Treasury promised prompt delivery of all documents pending receipt of the expanded 6103 waiver.

At 8:30 p.m. on January 3, 1996, the White House delivered a document production to Committee offices. Included in that production was a 9-page, undated draft memorandum written by David Watkins, a copy of which was simultaneously released to the media. Mr. Watkins wrote in this memorandum, which he characterized as a "soul cleansing" memorandum, that he had made his "first attempt to be sure the record is straight, something I have not done in previous conversations with investigators—where I have been as vague and protective as possible." The Watkins draft memo ascribed a far greater Travel Office role to First Lady Hillary Rodham Clinton than the White House or Mrs. Clinton ever had admitted:

> On Monday morning you [then-White House Chief of Staff McLarty] came to my office and met with me and Patsy Thomasson. At that meeting you explained that this was on the First Lady's "radar screen." I explained to you that I had decided to terminate the Travel Office employees and you expressed relief that we were finally going to take action (to resolve the situation in conformity with the First Lady's wishes). We both knew there would be hell to pay if, after our failure in the Secret Service situation earlier, we failed to take swift and decisive action in conformity with the First Lady's wishes.

Mr. Watkins concluded that his memo:

> [Made] clear that the Travel Office incident was driven by pressures for action originating outside my Office. If I thought I could have resisted those pressures, undertaken more considered action, and remained in the White House, I certainly would have done so. But after the Secret Service incident, it was made clear that I must more forcefully and immediately follow the direction of the First Family. I was convinced that failure to take immediate action in

this case would have been directly contrary to the wishes of the First Lady, something that would not have been tolerated in light of the Secret Service incident earlier in the year.

The Watkins draft memorandum was responsive to the September, 1995, document request by the Committee. Moreover, back in October, 1995, the White House Counsel's Office had informed the Committee that it had produced most of the substantive documents pursuant to that request.

The White House explained weeks afterwards that it first discovered the Watkins draft memorandum on December 29, 1995. The memorandum was reviewed by the White House Counsel's office and copied to several Administration officials as well as the personal attorneys for Mack McLarty, Patsy Thomasson, Harry Thomason, and the President and First Lady by January 2, 1996. The White House released the Watkins draft memorandum to the media on the evening of January 3, 1996, at the same time it released the documents to the Committee.

On January 5, 1996, Chairman Clinger issued subpoenas to both David Watkins and Harry Thomason for all records concerning the White House Travel Office and related matters. On January 11, 1996, Chairman Clinger issued interrogatories concerning the origin and chain-of-custody of the original and all copies of the Watkins draft memorandum to be answered in writing and under oath by:

Jane C. Sherburne, Special Counsel to the President.
Jon Yarowsky, Associate Counsel to the President.
Natalie Williams, Associate Counsel to the President.
Miriam R. Nimetz, Associate Counsel to the President.
Christopher D. Cerf, Associate Counsel to the President.
Nelson Cunningham, General Counsel, Office of Administration.
Patsy Thomasson, Deputy Director of White House Personnel.

Also on January 11, 1996, the Committee issued bipartisan subpoenas for all relevant records to the White House Executive Office of the President and the White House Office of Administration as well as bipartisan personal subpoenas to Mack McLarty, Bruce Lindsey, Todd Stern, Patsy Thomasson, Catherine Cornelius and Margaret Williams. The documents subpoenaed were due on January 22, 1996.

In the wake of the White House's release of the Watkins draft memorandum, Clinton officials, attorneys and surrogates launched attacks on the character and managerial skills of former Travel Office Director Billy Dale. First Lady Hillary Rodham Clinton also assailed Mr. Dale's management in various interviews. As a result, Chairman Clinger wrote President Clinton on January 16, 1996, requesting that the White House cease its continued attack on Mr. Dale.

On January 17, 1996, the Committee held its second hearing on the Travel Office matter. David Watkins was the sole witness at this hearing, at which he requested that no still or video cameras be allowed to record his testimony, invoking a House rule. In the hearing, he testified under oath regarding his draft memorandum

and other records he had turned over to the Committee pursuant to a personal subpoena. Watkins testified, "Was there pressure? Did I feel pressure of the desires and wishes of others? Yes, I did." Watkins testified he had felt, "a lot of internal pressure," and was asked by whom. He answered: "The President and First Lady." He also testified: "The pressure that I felt was coming from the First Lady was conveyed primarily through Harry Thomason and Vince Foster." Mr. Watkins' May 12, 1993, notes, first received by the Committee under personal subpoena, stated that Harry Thomason told him on that day that the First Lady wanted the Travel Office staff fired that day. In a May 14, 1993, telephone call to the First Lady, Watkins testified, he was told, "We should get our people in and get those people out."

In the wake of the discovery of the Watkins' memorandum where inconsistencies between Mr. Watkins' statements to the GAO and his undated memorandum and contemporaneous notes became clear, Chairman Clinger asked GAO to advise the Committee concerning what sanctions exist for intentionally providing false information to GAO. GAO responded in a letter dated January 17, 1996, which addressed the relevant statutes and legal precedents. In a January 23, 1996, response to GAO, Chairman Clinger asked that GAO compare and contrast the notes of its interviews with Mr. Watkins with copies of interviews conducted with Mr. Watkins by various investigative agencies, Mr. Watkins' draft memorandum and contemporaneous notes and other materials. Chairman Clinger asked that GAO identify all of the material inconsistencies between the documents provided and GAO's own interview notes and to determine whether they met the materiality test required by any applicable statute.

The seven fired Travel Office employees testified on January 24, 1996, when the Committee held its third hearing on the White House Travel Office firings. The seven fired Travel Office employees testified about their work in the White House Travel Office and the management of press charters, the events leading to their firings on May 19, 1993, and their investigation at the hands of the FBI and IRS. Individually, they testified of the costs of their respective legal defenses which, all told, amounted to some $700,000.

While all seven acknowledged that they served at the pleasure of the President, they questioned the manner in which the firings were undertaken. Mr. Dale testified:

> If the President or the First Lady or anyone else wanted us out in order to give the business to their friends and supporters, that was their privilege. But why can't they just admit that is what they wanted to do rather than continue to make up accusations to hide that fact?

Mr. Billy Dale testified in the hearing that records disappeared from the Travel Office in the period immediately preceding the firings and disputed allegations of Travel Office mismanagement as a "convenient excuse" intended to justify the firings. Five of the Travel Office employees testified about being placed on administrative leave within a week of the firings and subsequently finding employment elsewhere in the federal government. Mr. Dale and former White House Travel Office Deputy Director Gary Wright

had retired from federal service in the aftermath of the firings in 1993.

In a letter to the Committee dated January 23, 1996, Mr. David L. Clark, Director of Audit Oversight and Liaison for the General Accounting Office, evaluated current White House Travel Office management using the 29 criteria identified in its May 1994, report on the Travel Office. The evaluation was based on work performed by GAO in the Travel Office in the fall of 1995. GAO stated:

> We found that the Travel Office had developed policies and implemented procedures during the period January 1995 through August 1995 to address all but 3 of the 29 criteria. For those three, we found that the Travel Office had not (1) billed customers within its stated 15-day requirement, (2) paid vendors within its stated 45-day requirement, and (3) performed bank reconciliations regularly.

GAO also reported:

> [T]he Travel Office had a policy requiring monthly reconciliations of its checkbook with the cash balance reported by its bank. As of April 1994, we found that staff were performing the reconciliations as required. However, from January 1995 through August 1995, Travel Office staff performed no bank reconciliations because other tasks were given a higher priority. Immediately prior to our review, the Travel Office reconciled all outstanding bank statements and found deposits totaling $200,000 that had not been entered into its checkbook. These funds were all owed to vendors who had previously furnished goods and services for press trips. White House officials informed us that future monthly reconciliations will be performed as required.

GAO's discovery of a $200,000 discrepancy in White House Travel Office deposits for calendar year 1995 is a matter of some concern given that the White House alleged in May, 1993, that it had fired the entire Travel Office staff and launched an FBI criminal investigation on the basis of a $18,200 discrepancy in Travel Office petty cash funds.

On January 30, 1996, General Counsel Robert P. Murphy of the General Accounting Office wrote Chairman Clinger addressing inconsistencies between statements made by David Watkins to GAO and Watkins' undated draft memorandum and notes taken by Watkins which were dated May 31, 1993, and Watkins' GAO interview and other relevant documents.

On February 1, 1996, Chairman Clinger and Senate Judiciary Committee Chairman Orrin Hatch (R–UT) introduced a bill to reimburse the legal expenses of the seven fired White House Travel Office employees. The bill would reimburse nearly $500,000 spent by Mr. Billy Dale on his defense as well as the Travel Office expenses still due by his six colleagues. In a 1994 appropriation, Congress previously reimbursed $150,000 in their legal expenses.

On February 7, 1996, the Committee issued additional bipartisan personal subpoenas to a number of current and former White

House employees, volunteers, friends and others involved in the Travel Office matter, including Matt Moore.

On February 13, 1996, following consultation with Chairman Clinger, the GAO asked Federal prosecutors to investigate possible false statements made to GAO by David Watkins, having concluded that statements made or attributed to Mr. Watkins were inconsistent with statements he made in his GAO interview. Justice Department officials submitted the referral to the Independent Counsel and asked the court to approve an expansion of the scope of Independent Counsel Kenneth Starr to include this referral.

The Government Reform and Oversight Committee submitted a list of 26 interrogatories to First Lady Hillary Rodham Clinton on February 15, 1996. These interrogatories were to be answered in writing and under oath by the First Lady by February 29, 1996. The White House subsequently asked for an extension and the Chairman of the Committee on Government Reform and Oversight agreed to a three-week extension. The White House provided the First Lady's sworn responses to the Committee on the second due date, March 21, 1996. Her responses were released to the media at the same time. In the responses, the First Lady insisted she had no decision-making role in the Travel Office firings and that her statements to GAO were accurate. As to conversations with Harry Thomason, Vince Foster and David Watkins, the First Lady had very few specific recollections.

Chairman Clinger submitted H. Res. 369, which was referred to the Committee on Rules, on February 29, 1996. H. Res. 369 provided special authority to the Committee on Government Reform and Oversight to obtain testimony for purposes of investigation and study of the White House Travel Office matter. The bill was limited, deliberately, to provide deposition authority to the Committee on Government Reform and Oversight only for its investigation of the Travel Office matter. Deposition authority allowed the Committee to obtain sworn testimony from witnesses while minimizing the number of hearings needed in order to complete the investigation.[18]

The House approved H.Res. 369 on March 7, 1996. Thereupon, the Committee on Government Reform and Oversight notified witnesses it wished to testify under oath before the Committee. Depositions commenced in late March, 1996, and are expected to be completed by June, 1996.

The White House made a March 15, 1996, production of documents pursuant to the Committee's January 11, 1996, subpoena. That production contained yet another unproduced May 3, 1994, handwritten letter from David Watkins to Mrs. Clinton. No explanation for the White House's failure to produce this document for nearly two years during the course of numerous other document requests and subpoenas was proffered until two requests for a chain-of-custody were made. Mr. Quinn finally responded on April 5, 1996, stating only that the letter was located in a stack of

[18] Precedents for such deposition authority have included: 1) President Nixon Impeachment Proceedings (93rd Congress, 1974, H.Res. 803); 2) Assassinations Investigation (95th Congress, 1977, H.Res. 222); 3) Koreagate (95th Congress, 1977, H.Res. 252 and H.Res. 752); 4) Abscam (97th Congress, 1981, H.Res. 67); 5) Iran-Contra (100th Congress, 1987, H.Res. 12); 6) Judge Hastings Impeachment Proceedings (100th Congress, 1987, H.Res. 320); 7) Judge Nixon Impeachment Proceedings (100th Congress, 1988, H.Res. 562); and 8) October Surprise (102nd Congress, 1991, H.Res. 258).

unsorted, miscellaneous papers and memorabilia in the Office of Personal Correspondence having been forwarded to Carolyn Huber from the First Lady. Ms. Huber forwarded the original letter to the First Lady on March 4, 1996. Mr. Quinn stated that Mrs. Clinton did not look at the letter until March 12, 1996, at which time she immediately sent the only copy of the White House document to her personal lawyer, David Kendall. Mr. Kendall reviewed the original and returned a copy, and later the original, to Special White House Counsel Jane Sherburne.

On March 22, 1996, the three-judge federal appeals panel which appointed Kenneth W. Starr Whitewater Independent Counsel approved an expansion of Independent Counsel Starr's mandate to include the issue of whether Mr. David Watkins lied about First Lady Hillary Rodham Clinton's role in the Travel Office firings and related matters. Attorney General Janet Reno referred the Watkins matter to the three-judge panel after the Justice Department had concluded that Watkins could be investigated by an independent counsel.

By a vote of 350 to 43 on March 19, 1993, the House of Representatives passed H.R. 2937, a bill to reimburse the legal expenses and related fees incurred by former employees of the White House Travel Office with respect to the termination of their employment in that office on May 19, 1993.

In document productions from individuals subpoenaed, the Committee was provided with a copy of a February 15, 1996, White House Memorandum from John M. Quinn, Counsel to the President and Jane C. Sherburne, Special Counsel to the President, to a witness who had been subpoenaed by the Committee on Government Reform and Oversight to provide all records related to the White House Travel Office matter in the witness' possession to the Committee. The memorandum from Mr. Quinn and Ms. Sherburne stated, in part:

> Last week, the Committee [on Government Reform and Oversight] issued personal subpoenas to you and other current and former White House employees. These personal subpoenas call for personal as well as White House records. The Counsel's Office will handle production of your responsive *White House* records, i.e., records created or obtained during the course of your official duties. Accordingly, you should forward any White House records you believe may be responsive to the Counsel's Office and we will determine whether they should be produced to the Committee. You should provide any responsive personal records directly to the Committee. [Emphasis in original.]

The existence of the February 15, 1996, memorandum from Mr. Quinn and Ms. Sherburne greatly concerns the Committee because the February 7, 1996, subpoenas served were personal subpoenas. Those subpoenaed to provide all relevant White House Travel Office records in their possession remain personally responsible for making a complete production, whether or not the White House chooses to withhold any or all of their documents from production to the Committee. Given the White House's continuing unwillingness to make a complete production of records it has been subpoe-

naed to provide the Committee, its instructions in the February 15, 1996, memo by Mr. Quinn and Ms. Sherburne to witnesses served personal subpoenas, suggests that the White House intends to play an intermediary role in the case of current and former White House staffers, volunteers and others in a manner which may lead to their being held personally liable for a failure to produce all relevant records.

In the wake of its discovery of the February 15, 1996, memorandum by Mr. Quinn and Ms. Sherburne, the Committee wrote letters to each individual who had been issued a personal subpoena informing them that all records responsive to the Committee's January and February 1996, subpoenas must be produced by May 8, 1996. Chairman Clinger sent similar letters to White House Counsel Quinn and Attorney General Reno informing them that all records responsive to White House and Justice Department subpoenas were to be produced by May 8, 1996.

Chairman Clinger also announced on May 2, 1996, that he had scheduled a Committee business meeting for Thursday, May 9, 1996, at 9 a.m. to consider a privileged resolution to compel production of any subpoenaed records relating to the White House Travel Office which were not provided to the Committee by May 8, 1996.

WHITE HOUSE HISTORY OF STONEWALLING

The White House response to the several investigations into the White House Travel Office matter has been a history of three years of stonewalling. Despite a GAO investigation which was mandated by law—a law which President Clinton himself signed, an OPR investigation conducted by the President's own political appointee, and criminal investigations conducted by the Justice Department; the White House has continued to withhold documents relating to Travelgate. An abbreviated history of the stonewalling follows.

A. GAO Investigation

On July 2, 1993, a law was signed by the President which included a provision mandating the GAO review of the Travel Office. The report originally was to be completed by September 30, 1993, but due in part to numerous White House delays, interviews were not completed until March 1994 and the report finished in May 1994. Last fall, a GAO representative testified before this Committee that the measure of cooperation received from the White House was less than optimal. She further testified that not all documents were provided to GAO by the White House.[19] Indeed, the White House denied GAO responsive documents that only came to light after this Committee began its investigation. The following is an overview of White House delays in document production with GAO:

While the Justice Department did not object to the White House interviewing Catherine Cornelius, David Watkins, and a number of other employees in the course of the White House Management Re-

[19] GAO official Nancy Kingsbury testified before the Committee on October 24, 1995, "As a practical matter, we depend on and usually receive the candor and cooperation of agency officials and other involved parties and access to all their records. In candor, I can't say that there has been quite as generous an outpouring of cooperation in this case as might have been desirable." See, White House Travel Office—Day One, Hearings before the House Committee on Government Reform and Oversight, 104th Cong., 2d Sess., January 24, 1986.

view despite the fact that there was an ongoing criminal investigation, the Justice Department did delay and/or prevent GAO from completing some of its interviews.

GAO experienced months of delays while seeking documents regarding the Travel Office matter and ultimately did not receive all relevant documents pursuant to its document requests. The White House Counsel's Office worked to narrow the scope of GAO document requests throughout that period.

As a result of the narrowed document requests, the White House failed to provide the Vince Foster Travel Office file (which White House Counsel Bernard Nussbaum kept in his office following Mr. Foster's death), and the White House failed to provide the White House Management Review interview notes.

Even the narrowed request however, does not explain why the White House failed to provide the Watkins "soul cleansing memo." David Watkins, Matt Moore and Patsy Thomasson all had copies of the memo and all were made aware of the various document requests and subpoenas. Matt Moore himself was involved in the process of producing documents.

White House failed to provide any documents related to the efforts by Harry Thomason and Darnell Martens to obtain GSA contracts for their company, TRM.

GAO noted that the level of cooperation that it received from the White House was not conducive to properly conducting its work.

B. OPR Investigation

On July 15, 1993, Deputy Attorney General Phillip Heymann called on the Justice Department's Office of Professional Responsibility (OPR) to conduct a review of the FBI's role in the Travel Office firings. Later, after Vincent Foster's death and the discovery of his "suicide note," Mr. Heymann added to the investigation a review of the comments in Vincent Foster's note which mentioned that the "FBI lied."

This OPR investigation was ordered after President Clinton himself wrote to the then Chairman of the Judiciary Committee that his Administration would cooperate with any Justice Department investigation. As discussed supra, OPR Counsel Michael Shaheen later wrote that he was "stunned" by the documents withheld from his inquiry and did not believe the White House officials he dealt with were cooperative.

The following is an overview of the White House delays and denials in responding to the Office of Professional Responsibility investigation:

White House failed to provide the Vince Foster Travel Office file. OPR Counsel Michael Shaheen wrote a scathing memo in July 1995 about not receiving this document for OPR's investigation. Mr. Shaheen wrote: "we were stunned to learn of the existence of this document since it so obviously bears directly upon the inquiry we were directed to undertake in late July and August 1993 . . ."

The White House only provided the White House Management Review notes from the interview with Vincent Foster to OPR. OPR had asked for all of the interview notes. Mr. Shaheen wrote: "The White House declined to provide the notes and failed to mention

the existence of any handwritten notes by Mr. Foster on the subject."

Mr. Shaheen also stated in his memo: "we believe that our repeated requests to White House personnel and counsel for any information that could shed light on Mr. Foster's statement regarding the FBI clearly covered the notebook [the Vince Foster Travel Office notebook] and that even a minimum level of cooperation by the White House should have resulted in its disclosure to us at the outset of our investigation."

Shaheen noted that the Vince Foster Travel Office notebook also had been withheld from the Independent Counsel.

Mr. Shaheen and members of his staff informed Committee Counsel in an interview that by December, 1993, OPR was considering going to the Attorney General to request a full investigation into the Travel Office matter because of the "very dangerous signals" sent to the investigators which indicated possible obstruction of its investigation. Shaheen and his investigators noted that the memories of White House witnesses were very vague and this was only several months after the events in question. Mr. Shaheen's investigation was cut short by the appointment of the Independent Counsel.

C. Justice Department, Public Integrity Section

In May, 1993, the Public Integrity Section of the U.S. Department of Justice began a criminal investigation into the Travel Office matter and shortly thereafter began an investigation into the roles of Harry Thomason and Darnell Martens at the White House.

In the course of the Public Integrity Section's investigation, the White House engaged in the extraordinary step of withholding documents from its own Justice Department which was, at the time, conducting a criminal investigation into the actions of presidential friend Harry Thomason as well as a criminal investigation of Billy Dale. The Clinton White House foot-dragging with Justice Department prosecutors caused Clinton appointee and head of the Public Integrity Section, Lee Radek, to write in an internal memo:

> At this point we are not confident that the White House has produced to us all documents in its possession relating to the Thomason allegations . . . [T]he White House's incomplete production greatly concerns us because the integrity of our review is entirely dependent upon securing all relevant documents.

The following is an overview of White House delays and denials in dealing with the investigation of the Justice Department's Public Integrity Section.

July of 1993.—The Department of Justice began trying to get an interview with Harry Thomason while Thomason's lawyer began trying to get access to the White House Management Review interview notes of Harry Thomason.

Summer of 1993.—Public Integrity began seeking documents from the White House in the summer of 1993 but received little information. As of September 30, 1993, Prosecutor Goldberg wrote to the White House "to confirm that the White House had only located two documents related to Harry Thomason."

October 12, 1993.—White House Counsel sent an agreement which would allow Public Integrity prosecutor Goldberg to "view" two Harry Thomason memos.

November 12, 1993.—Goldberg signed an agreement to view two Harry Thomason "White House project" memos but not take any notes or make copies. At this point, almost six months after the firings and six months after the initiation of an investigation into Travel Office related matters, no one at the White House appears to have mentioned the GSA/ICAP contracts Harry Thomason and Darnell Martens generated while seeking business for their company, TRM.

January 1994—Spring of 1994.—Public Integrity continued to seek documents about Harry Thomason's activities at the White House and received its first ICAP/GSA contract documents regarding efforts by Harry Thomason and Darnell Martens to seek government contracts.

March 14, 1994.—Public Integrity wrote to White House Counsel Eggleston asking for confirmation in writing that the White House had searched for all Harry Thomason files.

April 5, 1994.—Neil Eggleston distributed a memo to gather all Harry Thomason and Darnell Martens documents by April 7, 1994. It requires a signed certification stating: "I have searched my files and I have no documents responsive to the requests set forth in this memorandum."

April 5, 1994.—An FBI e-mail on this date titled: "WHTO Update" states: "there has been some problem in obtaining records from the White House regarding Thomason's duties and responsibilities. Goldberg is considering issuing a subpoena * * * "

Spring 1994.—Production of Harry Thomason documents to Public Integrity continues. Matt Moore and Neil Eggleston were involved in document production. (Matt Moore possessed copies of the Watkins memos that never were turned over.)

May 11, 1994.—Neil Eggleston, Joel Klein and Marvin Krislov (all in the White House Counsel's office) wrote a letter to the Independent Counsel addressing how the White House would comply with the Independent Counsel's grand jury subpoena. (Their letter narrowed the scope of the Independent Counsel's initial request.)

Sometime in May 1994.—Eggleston reviews the Foster Travel Office file to determine if it is responsive to the Special Counsel Robert Fiske subpoena. He decides that it is not. Eggleston apparently ignores the fact that the Foster Travel Office file, which mentions Harry Thomason and Darnell Martens throughout, IS responsive to the Public Integrity document requests.

June 24, 1993.—Neil Eggleston writes a letter to Stuart Goldberg informing him that Public Integrity has all of the Harry Thomason documents as of this date. (Vince Foster Travel Office file is not included.)

July 10, 1994.—Neil Eggleston writes a memo to Lloyd Cutler about the Vince Foster Travel Office file and why it wasn't produced to any investigation to date. Eggleston recommends producing only portions of the Foster notebook to Public Integ-

rity by that Tuesday (July 12, 1994). Those portions are not provided until one month later.

August 19, 1994.—Neil Eggleston provides the additional documents from Foster's Travel Office notebook to Public Integrity (approximately 20 pages of the 100-plus page document are provided).

August 30, 1994.—Public Integrity prosecutor Goldberg writes the White House to ask why Harry Thomason documents were withheld and asks for an explanation by September 8, 1994.

September 8, 1994.—Neil Eggleston writes Goldberg explaining why he failed to turn over all of the Harry Thomason documents saying "I sincerely apologize for the oversight and hope that the delay in production of these documents has not caused you any inconvenience * * * please be advised that I have resigned effective September 8, 1994."

September 8, 1994.—Public Integrity Chief Lee Radek writes a memo to Jack Keeney stating: "At this point we are not confident that the White House has produced to us all documents in its possession relating to the Thomason allegations * * * the White House's incomplete production greatly concerns us because the integrity of our review is entirely dependent upon securing all relevant documents."

September 13, 1994.—A Grand Jury subpoena for documents from the White House relating to Harry Thomason and Darnell Martens is served on the White House with a September 30, 1994, due date.

September 30, 1994.—All Harry Thomason and Darnell Martens records pursuant to the September 13, 1994, subpoena are due to the Grand Jury. The White House produced a "PRIVILEGE LOG" which identifies more than 120 documents that the White House refuses to turn over to its own Justice Department in the course of a criminal investigation involving activities at the White House.

July 6, 1995.—White House provides complete Vince Foster Travel Office file to the press.

July 28, 1995.—White House, in responding to Public Integrity prosecutor Goldberg, sends more pages of Vince Foster Travel Office notebook.

August 17, 1995.—Public Integrity prosecutor Goldberg reviews more Vince Foster documents at the White House with White House Associate Counsel Natalie Williams.

November 4, 1995.—In the midst of the Billy Dale trial, a White House Associate Counsel faxes a memo on the Travel Office files that is dated 5/21/93. The memo was from a member of the White House Records Management staff who expressed concerns about the handling of the documents in the Travel Office after the firings. The memo had not been provided previously to Public Integrity or to defendant Billy Dale, whose criminal trial was under way.

November 6, 1995.—The White House sends additional unknown documents to Public Integrity prosecutor Goldberg.

In summary, it took the White House nearly six months to allow Public Integrity prosecutors to see any documents related to Harry

Thomason and nearly a year to provide most of the ICAP/GSA documents. The White House failed to provide the Vince Foster Travel Office file in its entirety until July, 1995, after it released the file to the press. Portions of the file had been provided to Public Integrity in August, 1994. A September, 1994, subpoena failed to produce this document in its entirety.

The White House also failed to provide the Watkins "soul cleansing memo" which was in Patsy Thomasson's files despite numerous document requests and the September, 1994, subpoena. At the very least, David Watkins, Matt Moore and Patsy Thomasson were aware of the existence of this document throughout the course of document requests.

Even after the September, 1994, subpoena from Public Integrity, the White House produced a privilege log of 120-plus documents it refused to provide to its own Justice Department in the course of a criminal investigation. White House production of documents to Public Integrity continued throughout the course of the Billy Dale trial in October–November, 1995. Since these documents belatedly were provided to Public Integrity, they also belatedly were provided to the defendant during his trial instead of before the trial began. Public Integrity does not appear to have sought documents directly from Harry Thomason until after the Billy Dale trial ended and after both the Committee on Government Reform and Oversight and the Independent Counsel had sought documents from Mr. Thomason and Mr. Martens. New—never before known of—documents regarding efforts by Mr. Thomason and Mr. Martens to seek business for TRM were included in these productions to the Justice Department after Billy Dale's trial.

Public Integrity's tolerance of White House foot-dragging was in stark contrast to the aggressive pursuit of Billy Dale and his family throughout the course of the criminal investigation of Mr. Dale.

D. Committee Investigation

1. Ranking Member Clinger's efforts in the Minority, 1993–94:

On June 16, 1993, Ranking Minority Member Bill Clinger joined House Republican leadership in requesting documents and answers to questions regarding the Travel Office. No substantive response ever was provided.

August 6, 1993.—Chairman Clinger joins Republican leadership in requesting information on the IRS investigation and other Travel Office questions. (No substantive response ever was provided.)

October 15, 1993.—Chairman Clinger writes Bernard Nussbaum concerning the status of Harry Thomason as a special government employee. (No substantive response ever was provided.)

September 13, 1994.—Chairman Clinger requests that the White House provide access to GAO documents maintained at the White House. (Request never provided—later memo shows White House Counsel Neil Eggleston recommended turning down the request after the Appropriations bill for the White House had passed.)

September 20, 1994.—Chairman Clinger again requests to review GAO documents at the White House.

October 1994.—Chairman Clinger issues a report analyzing the GAO report on the Travel Office and calling for hearings on the discrepancies in the GAO work papers versus the actual report and other various outstanding issues.

2. Chairman Clinger's Efforts in the Majority, 1995—Present.

Once elected Chairman of the new Committee on Government Reform and Oversight, Chairman Clinger announced that he would continue the Committee's investigation into the White House Travel Office matter. On June 14, 1995, the Committee makes first document request to White House focusing on the White House Management Review documents and documents related to all of Harry Thomason's activities.

Throughout June and July, 1995.—White House fails to produce any documents and requests that the Committee hire security guards to protect any documents provided to the Committee.

July 18, 1995.—White House produces the Vince Foster Travel Office file several weeks after providing it to the press.

August 2, 1995.—White House produces documents, 90% of which previously have been made publicly available (i.e. White House Management Review copies, GAO report copies, press conference transcripts).

August 9, 1995.—White House produces more copies of the Management Review from various files and several miscellaneous documents.

August 28, 1995.—White House produces miscellaneous handwritten notes by White House employees.

September 5, 1995.—White House produces a privilege log identifying 900 pages of documents from the White House Management Review.

September 13, 1995.—After negative press reaction to White House privilege log, the White House produces approximately 400 pages of interview notes from the 900 pages of Management Review documents.

September 18, 1995.—White House produces Bruce Lindsey documents regarding efforts by Harry Thomason and Darnell Martens to obtain GSA consulting contracts for their business, TRM. These documents had not been identified previously as documents that were being withheld in the privilege log. (On this same day, Harry Thomason cancels a previously scheduled interview with Committee staff.)

On September 18, 1995, the Committee makes a second document request to White House requesting all White House Travel Office documents from all of the various investigations.

September 25, 1995.—White House produces more notes from the White House Management Review.

September 28, 1995.—White House produces more documents from Bruce Lindsey's office, Counsel's office and Office of Administration.

October 4, 1995.—White House produces additional White House Management Review documents.

October 5, 1995.—White House produces documents from Neil Eggleston and Bill Kennedy.

October 13, 1995.—White House produces documents from Counsel's office, Office of Administration and Records Management.

October 17, 1995.—White House produces documents from Cliff Sloan, Neil Eggleston and various White House Management Review files.

October 24, 1995.—Committee holds first hearing on the Travel Office matter.

October 26, 1995.—Billy Dale embezzlement trial begins.

November 14, 1995.—White House produces more White House Management Review documents, including lengthy chronologies and drafts, but still does not provide the legal analysis prepared by Beth Nolan concerning Harry Thomason's status as a special government employee (staff is allowed to review).

November 16, 1995.—Billy Dale acquitted.

December 19, 1995.—White House Counsel sends out memo to all staff to respond to Committee document requests.

December 22, 1995.—White House produces more documents from Joel Klein, Office of Records Management, Cliff Sloan, Patsy Thomasson and Counsel's office.

December 29, 1995.—Watkins memo allegedly found at White House.

January 3, 1996.—White House produces more documents from various White House offices. Watkins memo is produced.

On January 5, 1996, the Committee issues bipartisan subpoenas to David Watkins and Harry Thomason for all documents. On January 11, 1996, the Committee issues bipartisan subpoenas to the White House for all outstanding documents and to six individuals at White House. Responsive documents are due to the Committee on January 22, 1996.

January 22, 1996.—White House produces documents from Counsel's office, Chief of Staff's office, Office of Administration and other offices.

January 29, 1996.—White House produces documents from miscellaneous files including those of Patsy Thomasson and Catherine Cornelius.

February 1, 1996.—White House Counsel sends out memo to all staff requesting all documents responsive to the January 11, 1996 subpoena due on January 22, 1996.

February 14, 1996.—White House produces documents from various individual files.

On February 7, 1996, the Committee sends individual subpoenas to more than 25 present and former White House staff (due February 26, 1996). On February 15, 1996, the Committee issues interrogatories to the First Lady due on February 29, 1996. A subsequent request for an additional three weeks to respond was granted.

February 15, 1996.—White House distributes a memo to present and former staff, volunteers and others who received personal subpoenas requesting that they turn over their documents to the White House and stating that the White House in turn will produce relevant documents to the Committee.

February 22, 1996.—White House produces documents from various White House offices, including notes taken by a White House intern monitoring the Billy Dale trial and documents related to Billy Dale trial. White House represents that responsive documents have been produced and this should complete production but that there are documents they believe are subject to privilege which they are withholding. No privilege log is provided.

March 4, 1996.—White House produces additional documents.

March 8, 1996.—White House produces documents from Cliff Sloan, Todd Stern, Matt Moore, Dee Dee Myers, Natalie Williams and Counsel's office.

March 15, 1996.—White House produces a small number of documents including a never before produced letter to the First Lady from David Watkins dated May 3, 1994—the day after the GAO Travel Office Report was issued.

March 21, 1996.—First Lady provides responses to Committee's interrogatories regarding the Travel Office.

April 1, 1996.—White House produces additional documents including the first e-mail produced by the White House.

April 2, 1996.—White House produces additional documents from Cliff Sloan's records and Office of Personal Correspondence.

April 18, 1996.—White House produces documents from Dee Dee Myers that were left out of earlier productions (documents are notes from May, 1993, concerning the Travel Office).

April 24, 1996.—White House produces several pages of additional documents from Tom Castleton, David Watkins and Information & Systems Technology.

May 9, 1996.—White House continues to withhold documents related to the Travel Office matter. The Committee votes to hold Messrs. Quinn, Watkins and Moore in contempt of Congress.

INVOCATION OF PRIVILEGES

A. Assertion of executive privilege

1. Background

As has been fully recounted above, the Committee's investigation of the Travel Office firings has been prolonged, and essentially thwarted, by the tactics of delay, obfuscation, and deliberate obstruction by the White House, and in particular by the custodian of the documents sought, White House Counsel John M. Quinn. Following failures to supply documents responsive to its written requests of June 14, and September 18, 1995, and the belated discovery of the Watkins memo on December 29, 1995, the Committee, with full bipartisan concurrence, issued subpoenas duces tecum to David Watkins on January 5, 1996, Mr. John Quinn on January 11, 1996,[20] and to Matthew Moore on February 6, 1996, with re-

[20] The subpoena was directed to the "Custodian of Records, Executive Office of the President." White House Counsel John M. Quinn has acknowledged, through actions and words, that he is the custodian of the documents sought.

turn dates of January 11, 1996, January 22, 1996, and February 26, respectively.

A protracted process of attempted accommodation ensued which resulted in the discovery of previously requested or subpoenaed material amongst the production of various groupings of theretofore withheld documents. A rolling production of records ensued which continued sporadically for more than three months with no plausible explanation as to why documents were not found and produced earlier, and without any agreement as to a definitive timetable for the completion of the document production. Indeed, the White House throughout this period continually refused to supply the Committee with either an index of the documents being withheld or a privilege log specifically identifying documents for which presidential privilege was being claimed. The White House Counsel's Office also intervened with individuals with records subpoenaed by the Committee to have them send documents in their possession to the White House rather than directly to the Committee.

On May 2, 1996, Chairman Clinger advised White House Counsel Quinn, Attorney General Janet Reno, and former White House aides David Watkins and Matthew Moore that they were not in compliance with the subpoenas previously served on them, that the final return date for the covered material would be close of business May 8, 1996, and that a meeting of the full Committee was scheduled for 9:00 a.m. on May 9, 1996, at which time a vote on a resolution to cite them for contempt of Congress would be held if production of the records was not forthcoming. There followed a series of written and oral communications in which the White House adamantly refused to modify its stance of non-compliance or to supply an unequivocal constitutional basis for its position.

In a May 3 letter to Chairman Clinger, Mr. Quinn decried the threat of a contempt citation as an election season "political tactic." In a conversation between Mr. Quinn and Chairman Clinger on the morning of May 3, the Chairman informed Mr. Quinn that an impediment to the resolution of the dispute was the Committee's inability to understand the nature of the documents being withheld and suggested again that a privilege log be supplied. That evening Mr. Quinn responded with a telecopied letter to the Chairman broadly describing the categories of documents being withheld:

> 1. Documents relating to ongoing grand jury investigations by the Independent Counsel;
>
> 2. Documents created in connection with Congressional hearings concerning the Travel Office matter; and
>
> 3. Certain specific confidential internal White House Counsel Office documents, including "setting" notes, certain other counsel votes, memoranda which contain pure legal analysis, and personnel records which are of the type protected by the Privacy Act.

There was no indication that any of these documents involve communications to or from the President nor was there any specific claim of presidential privilege, only an allusion to the President's right to have the services of White House counsel who can operate with sufficient confidentiality to serve him.

Chairman Clinger responded by letter on May 6, explaining that the expansion of the Committee's investigation was the direct result of finding "significant evidence that the White House Counsel's Office was used to coordinate official responses to investigative bodies and, too often, deny investigative agencies with appropriate access to that information" which has raised serious questions "[w]hether these actions met the standards for improper, even criminal conduct." The Chairman also made it clear that his May 2 letter rejected an earlier (February 15, 1996) offer of limited access to certain documents conditioned on a surrender of the right of access to all other documents, and reiterated the firmness of the May 8 return date. Mr. Quinn responded that same day expressing a desire to continue to work toward a compromise solution, and offered to discuss making available material related to the IRS and FBI inquiries.

The Chairman responded to this last communication the next day, May 7, expressing appreciation for the offer of the IRS and FBI records, but noting that the IRS document had been previously promised, and that with respect to the FBI records, it was the first time the Committee heard anything about the White House withholding FBI records. Mr. Clinger also invited the submission of a written assertion of presidential executive privilege by 8:00 a.m., May 9, 1996, which would be transmitted to all members of the Committee.

On May 7, counsel for David Watkins submitted a legal memorandum claiming that drafts of the Watkins soul cleansing memo in the possession of Matthew Moore are protected by the attorney-client and work product privileges.

On May 8, Mr. Quinn, during a meeting with the Chairman and the Ranking Minority Member, transmitted to the Committee a memorandum from the Office of Legal Counsel, Department of Justice, suggesting that the scheduled vote on the criminal contempt citations be canceled and that legislation be passed vesting jurisdiction in a federal district court to resolve the subpoena compliance issue in a civil contempt proceeding before the court. In a response to the Ranking Minority Member dated that same day, the Chairman rejected the proposal as unreasonable, but advised that he would delay the filing of the Committee report on the contempt resolution to provide additional time for the White House to comply.

On the morning of May 9, Mr. Quinn wrote the Chairman expressing his view that the threat of criminal contempt is "irresponsible" and "calculated not to find the truth but instead to make a political point." He asserted that the Committee's subpoenas were not "sufficiently specific . . . to establish the demonstrably critical showing that the courts require in order for an oversight Committee to overcome the executive branch's strong interest in confidential and candid communications. Instead, you have unilaterally determined that this President is not entitled to any confidential legal communications and, therefore, any defense." Mr. Quinn then informed the Chairman that the Attorney General had provided the President with an opinion that "executive privilege may be properly asserted with respect to the entire set of White House Counsel's Office documents currently being withheld from the Committee, pending a final Presidential decision on the matter," and

that pursuant to that opinion the President had directed him to invoke executive privilege "as a protective matter" with respect to all the contested documents. The letter concluded with a request that any action with respect to the failure to comply with the subpoenas be held in abeyance pending the President's decision whether to claim privilege with respect to specific, individual documents.

By a vote of 27–19, the Committee on May 9 agreed to report a resolution of contempt of Messrs. Quinn, Watkins and Moore to the floor of the House.[21] The Chairman announced, however, that he would delay transmitting the Committee report to the floor to allow further opportunity for resolution of the dispute. But as of the date of the transmittal of this report, there has been no meaningful movement toward accommodation by the White House nor has there been an official written assertion of executive privilege by the President pursuant to the procedures implemented by President Reagan on November 4, 1982, and adopted by President Clinton.

2. There has been no effective claim of executive privilege by the President

In his May 2, 1996, letter to White House Counsel John M. Quinn, Chairman Clinger unequivocally set the close of business May 8 as the final return date for subpoena duces tecum issued on January 11, 1996. The Chairman reiterated the finality of that closure date in his subsequent correspondence with Mr. Quinn on May 6 and 7 and in a meeting with him on May 8. Mr. Quinn acknowledged his understanding of the due date and the consequences of non-compliance and made it clear in his letters of May 2 and 3 that his failure to comply would be intentional. Thus, as of the close of business on May 8, upon his failure to timely produce the subpoenaed documents admittedly in his custody and control, Mr. Quinn's contempt was complete.[22]

On May 7, Chairman Clinger invited Mr. Quinn to submit either a written statement setting forth valid claims of executive privilege signed by the President by 8:00 a.m. May 9. Mr. Quinn accepted that invitation by a letter of that date that related the view of Attorney General Reno that the President presently could assert executive privilege for all the subject documents until such time as he made final decision on the matter. Mr. Quinn advised that he had been directed to inform the Committee that the President was invoking executive privilege "as a protective matter, with respect to all documents in the categories identified on page 3" of the letter," until such time as the President, after consultation with the Attorney General, makes a final decision as to which specific documents require a claim of executive privilege." On the afternoon of May 9 the Committee voted to cite Mr. Quinn in contempt. The Chairman, however, agreed to delay transmission of the contempt report to the floor to allow for receipt of a further communication from the President on the matter of the privilege claim.

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[21] Prior to the Committee meeting, the Department of Justice agreed to comply with demands for documents in its possession. The portion of the contempt resolution directed at Attorney General Reno therefore was dropped.

[22] *United States* v. *Bryan,* 339 U.S. 323, 329-30 (1950) ("[W]hen the government introduced evidence in this case that respondent validly had been served with a lawful subpoena directing her to produce records within her custody and control, and that on the day set out in subpoena she intentionally failed to comply, it made a prima facie case of willful default.")

As of the date of the transmittal of this report, it has been several weeks since the invocation of the "protective" privilege claim, there still has been no compliance with the Committee's subpoena nor has there been an official presidential invocation of executive privilege pursuant to the procedures established by President Reagan on November 22, 1982, and adopted by President Clinton. Under those procedures, if designated officials, including the Attorney General, determine "that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the counsel to the President, who will advise the Department Head and the Attorney General of the President's decision." If the President decides to invoke the privilege, the decision is to be communicated to the congressional committee requesting the information that the claim is made with the specific approval of the President. In the past, Presidents in fact have executed and signed claims of privilege which have accompanied a detailed justification prepared by the subpoenaed official.

Under these circumstances, it is the belief of the Committee that it has waited a respectful period of time for receipt of the appropriate presidential claim. The self-imposed procedures for such claims are the Committee's only guide to the President's intention and are presumably binding on him in this situation.[23] A "protective" claim cannot endure indefinitely, stymying this Committee's investigation still further. Mr. Quinn's and Attorney General Reno's letters acknowledge that only the President himself can invoke the privilege. He has not done so. The Committee therefore determines that a reasonable period has elapsed for the President to make his claim and that the privilege has been waived.

3. Even if the protective claim of privilege were effective, it is insufficient to overcome the committee's lawful demand and need

In *United States* v. *Nixon,*[24] the Supreme Court for the first time recognized a constitutional basis for executive privilege holding that "the protection of the confidentiality of Presidential communications has * * * constitutional underpinnings."[25] But the Court unequivocally rejected President Nixon's claim to an absolute privilege. Blanket claims, it held, are unacceptable without further, discrete justification, and then only the need to protect military, national security, or foreign affairs secrets are to receive deferential treatment in the face of a legitimate coordinate branch demand.

> However, neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. The President's need for complete candor and objectivity from advisers calls for great deference from the courts. However, when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a con-

[23] See. e.g., *Service* v. *Dulles,* 354 U.S. 363, 382–89 (1957); *United States ex el Accardi* v. *Shaughnessy,* 347 U.S. 260, 265–67 (1954); *Vitarelli* v. *Seaton,* 359 U.S. 535, 539–40 (1959).
[24] 418 U.S. 683 (1973).
[25] 418 U.S. at 705–06.

> frontation with other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for in camera inspection with all the protection that a district court will be obliged to provide.
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> * * * * * * *
>
> To read the Article II powers of the President as providing an absolute privilege as against a subpoena essential to enforcement of criminal statutes on no more than a generalized claim of the public interest in confidentiality of non-military and non-diplomatic discussions would upset the constitutional balance of 'a workable government' and gravely impair the role of the courts under Article III.[26]

In the matter before this Committee, the President's blanket, undifferentiated assertion of so-called "protection" privilege is unacceptable. There is not involved here any matter involving the need to protect military, diplomatic, or national security secrets. Nor is there any claim that what is involved are confidential communications between the President and his closest advisors. What is involved in this instance is the legitimate exercise of this Committee's constitutional prerogative to engage in effective oversight of the Executive Branch, which the Supreme Court has acknowledged is at its peak when the subject of investigation is alleged waste, fraud, abuse, or maladministration within a government department or even the White House. The investigative power, it has stated, "comprehends probes into departments of the federal Government to expose corruption, inefficiency, or waste." [27] "[T]he first Congresses," it continued, held "inquiries dealing with suggested corruption or mismanagement of government officials",[28] and subsequently, in a series of decisions," [t]he Court recognized the danger to effective and honest conduct of the Government if the legislative power to curb corruption in the Executive Branch unduly were hampered." [29] Accordingly, the court stated, it recognizes "the power of the Congress to inquire into and publicize corruption, maladministration, or inefficiencies in the agencies of Government." [30]

As the Committee has gathered documents during the course of this investigation, a record has developed demonstrating that numerous previous Travel Office investigations were stymied by an unusual amount of resistance, delay, and denial in the production of necessary documents. Many congressional investigations, including this one, attempt to determine not only why certain activities occurred but why an administration has not acted or why they have delayed certain actions. From the first days of the Travel Office debacle, the President committed to cooperate. However, as dis-

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[26] Id. at 706, 707.
[27] 354 U.S. at 187.
[28] Id. at 182.
[29] Id. at 194–95.
[30] Id. at 200 n.33. See also, *McGrain* v. *Daugherty,* 272 U.S. 135, 151, 177(1927); *Barenblatt* v. *United States,* 360 U.S. 109,111 (1960); *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 504 n. 15 (1975).

cussed supra, even Justice Department officials have indicated that they were met with any unusual lack of candor and cooperation from White House officials. The dilatory tactics engaged in by the White House in producing documents for various investigations into the Travel Office and related matters have wasted hundreds of hours in staff time of the GAO and various divisions of the Justice Department. The Committee now seeks documents to determine why the White House engaged in such conduct and why such mal-administration occurred. Historically, such documents have been provided congressional committees, including such production by this Administration.[31]

The *Nixon* case, of course, did not involve the assertion of executive privilege in response to a congressional demand for information,[32] but under the circumstances of this situation the Committee is confident that a court will reject the President's blanket claim of privilege in the face of this Committee's proper exercise of its oversight authority, its patience in pursuing the subject documents, and its palpable need for the documents it has sought. The Executive's conduct in the course of this matter can be seen as an affront to the Committee and the Congress. We reject the claim of privilege presented.

B. Claims of attorney-client and work product privilege

1. Background

On January 3, 1996, the White House produced an undated nine-page typewritten "draft" memorandum by David Watkins in which he detailed his version of the "surrounding circumstances and the pressures" that led to the firing of the seven Travel Office employees in May 1993. Described as a "soul cleansing," it was intended to correct "inaccuracies or erroneous conclusions" contained in the internal White House Travel Office Management Review. The memo was found in late December 1995 amongst the files of Patsy Thomasson, then the Director of the Office of Administration at the White House, and was turned over to the Committee in belated response to previous document demands. No privilege was claimed with respect to the self-styled "soul cleansing" memo.

On January 5, 1996, the Committee issued a subpoena duces tecum to Mr. Watkins for documents and records regarding the White House Travel Office matter. On January 15, Watkins' attorney Robert Mathias provided a privilege log indicating that a November 15, 1993, memorandum from Watkins to his counsel, as well as drafts and notes regarding the White House management review of Travel Office firings, were being withheld on grounds of attorney-client and work product privilege.

On February 7, the Committee issued a subpoena duces tecum to Matthew Moore, a former attorney in the Office of Management and Administration for any records related to the White House Travel matter, including "[a]ll records relating to the 'Watkins

[31] See Footnote 11. During a document dispute with the House Commerce Committee, then chaired by Rep. John D. Dingell, President Clinton's Justice Department turned over law enforcement sensitive documents to Congress after at first arguing that they were protected deliberative documents.

[32] 418 U.S. at 712 n. 19 ("We are not here concerned with the balance between the President's generalized interest in confidentiality in and congressional demands for information.").

memo' found in Patsy Thomasson's files on December 29, 1995, and produced to the Committee on January 3, 1996, and all records of any contacts, communications, or meetings related to the findings of this memo." On February 26 Mr. Moore responded that he would not turn over covered documents in his possession for which Mr. Watkins had asserted claims of privilege. The documents were identified as "undated draft memorandum from David Watkins re: response to internal travel office review."

On May 7, 1996, Mr. Watkins' attorney provided the Committee with a letter explaining the factual and legal basis for his claims of privilege. Briefly summarized, it states that in September 1993, Watkins began preparing a document responding to the various conclusions of the internal White House Travel Office Management Review. The document went through many iterations—at least five and perhaps as many as 10 according to Moore—between early September and November 15 when it was finalized as a "Memorandum for Counsel." An unspecified number of the early drafts of the document were intended as a "potential" memo to then-White House Chief of Staff McLarty. Watkins enlisted the assistance of Matthew Moore, an attorney in the Office of Management and Administration, which he headed. Moore had graduated law school and passed the bar in 1992 and began work for Watkins in February of 1993.

Moore is claimed by Watkins said to have assisted Watkins in the preparation of the memo in two ways. First, he acted as a "scribe," typing many of the drafts, and performing an editing function. Second, he served to provide a potential privilege cloak for the documents: "Mr. Watkins discussed with Mr. Moore, a lawyer, how to prepare the Memorandum for Counsel so that it would appropriately be considered privileged and confidential." The memo, it is asserted, "was not prepared as part of the business of that office," and was written in Watkins' "good faith belief that the Memorandum for Counsel would be kept privileged and confidential and that Mr. Moore's assistance, and status as an attorney, would help preserve the privileged and confidential status of the document." Copies of the draft memorandum were sent to Watkins' private attorney, at the time Ty Cobb, for his review and advice. Watkins kept drafts of the memos in his "Ty Cobb file." The "content" of the drafts being withheld by Moore is claimed to be "the same as one of the drafts included within Mr. Watkins' January 15, 1996, privilege log."

Mr. Moore was deposed before the Committee on March 26, 1996. He testified that "I do not personally believe I was ever in or—ever formed a personal representation or ever served as his personal attorney." He never was paid for any personal representation. In his official capacity in the Office of Management and Administration, he would be sought out by Watkins for legal advice which Moore would secure by "confer[ring]] with the White House Counsel's Office" and then conveying answers to Watkins. Moore's principal function was to respond to congressional requests, such as requests for further information from Members made at congressional hearings.

Mr. Moore further testified that Patsy Thomasson was provided a copy of the "soul cleansing" memo and that he discussed the

memo with Thomasson personally and that the memo was discussed at a meeting attended by Watkins, Moore and Thomasson.[33]

Question. Did you discuss either Deposition No. 4, Watkins memo, or any drafts with any other person other than David Watkins?

Answer. Yes.

Question. Can you please tell us who and approximately when you would have had those discussions?

Answer. Patsy Thomasson, and approximately between September and November; certainly in September, 1993.

Question. Would that have been during the period where it was being drafted and revised?

Answer. That's my recollection.

Question. Can you please tell us what you discussed with Patsy? Okay. First, I would ask you to discuss what you discussed with Patsy outside the presence of Mr. Watkins.

Answer. I don't recall specific discussions with her edits or changes to the document. However, I do recall one very brief conversation in which we very briefly discussed the advisability of the preparation of this memo, Deposition Exhibit No. 4, the Watkins memo.

Question. Can you just tell us in a little bit more detail what best you remember was said to Ms. Thomasson or by Ms. Thomasson?

Answer. Basically we communicated to each other our view that the preparation of the memo was inadvisable.

Question. How were these discussions held?

Answer. Can you——

Question. Were they in person?

Answer. Yes.

Question. Did you ever give her a copy of the Watkins memo or any of the other versions?

Answer. Right. I don't really recall giving her a copy. I usually gave the copies straight to David.

Question. Did you have any discussions about the Watkins memo——

Answer. Can I go back just to say I may have given her a copy. I just don't recall.

Question. Did you ever have any discussions about the Watkins memo with Patsy Thomasson in the presence of David Watkins? And by "Watkins memo, I am going to be referring to meaning the memo as well as the drafts.

Answer. I believe so, yes.

Patsy Thomasson, the Director of the White House Office of Administration during the period in which the Watkins memo was evolving, was deposed by the Committee on April 22, 1996. She reported to Watkins and was not an attorney. She acknowledged that she was provided with a copy of the "soul cleansing" memo by Watkins at the time it was drafted and was asked to review it and provide edits and comments. She specifically advised Watkins that she "didn't think it was a good idea for him to write a memorandum with regard to the Travel Office."

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[33] See deposition of Matthew Moore, pages 70–72.

In testimony before the Committee on January 17, 1996, Mr. Watkins acknowledged that he initiated the preparation of the "soul cleansing" memo, that Moore acted as a "scribe", and that the memo contained truthful, accurate facts and observations. At no point in his testimony did he claim any intent to cloak that memo in privilege. The hearing record also reveals that after its discovery in Ms. Thomasson's files, the memo was distributed throughout the White House before being transmitted to the Committee, and then was released to the press by the White House.[34]

2. Assertions of claims of attorney-client and work product before congressional committees

It is well-established by congressional practice that acceptance of a claim of attorney-client or work product privilege before a committee rests in the sound discretion of that committee. Neither can be claimed as a matter of right by a witness, and a committee can deny them simply because it believes it needs the information sought to be protected to accomplish its legislative functions.[35]

In actual practice, all committees that have denied claims of privilege have engaged in a process of weighing considerations of legislative need, public policy, and the statutory duties of congressional committees to engage in continuous oversight of the application, administration and execution of the laws that fall within its jurisdiction, against any possible injury to the witness.[36] In the particular circumstances of any situation, a committee may consider and evaluate the strength of a claimant's assertion in light of the pertinency of the documents or information sought to the subject of the investigation, the practical unavailability of the documents or information from any other source, the possible unavailability of the privilege to the claimant if it were to be raised in a judicial forum, and a committee's assessment of the cooperation of the witnesses in the matter, among other considerations. A valid claim of privilege, free of any taint of waiver, exception or other mitigating circumstance, would merit substantial weight. But any serious doubt as to the validity of the asserted claim would diminish its compelling character.

Moreover, the conclusion that recognition of non-constitutionally based privileges is a matter of congressional discretion is consistent with both traditional British parliamentary and the Congress' historical practice.[37]

The legal basis for Congress' prerogative in this area is premised upon its inherent constitutional prerogative to investigate which has been long recognized by the Supreme Court as extremely broad and encompassing, and which is at its peak when the subject is

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[34] Hearing, "White House Travel Office—Day Two," before the House Committee on Government Reform and Oversight, 104th Cong., 2d sess. 13–14, 17, 25–26 (1996) (Travel Office Hearing).

[35] See Morton Rosenberg, "Investigative Oversight: An Introduction to the Law, Practice, and Procedure of Congressional Inquiry," CRS Report No. 95–464A, at 43 (Apr. 7, 1995).

[36] See, e.g., "Refusal of William H. Kennedy, III, To Produce Notes Subpoenaed By The Special Committee to Investigate Whitewater Development Corporation and Related Matters," Sen. Rept. No. 104–191, 104th Cong. 1st Sess. 9–19 (1995); "Proceedings Against Ralph Bernstein and Joseph Bernstein," H. Rept. No. 99–462, 99th Cong. 2d Sess. 13, 14 (1986); Hearings, "International Uranium Control," Before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. Vol. 1, 60, 123 (1977).

[37] See Rosenberg, supra, at 44–49.

fraud, abuse, or maladministration within a government department.[38] It is also founded on the Constitution's affirmative grant to each House of the authority to establish its own rules of procedure.[39] The attorney-client privilege is, on the other hand, a judge-made exception to the normal principle of full disclosure in the adversary process which is to be narrowly construed and has been confined to the judicial forum.[40] The privilege has been deemed subject to a variety of exceptions, including communications between a client and attorney for the purpose of committing a crime or perpetrating a fraud or other obstruction of law at some future time, and to a strict standard of waiver.[41] See generally, Paul R. Rice, Attorney-Client Privilege in the United States, chaps. 8:2–8:15 and 9 (1993)(Rice).

Further, the work product privilege,[42] another judge-made evidentiary exception, has always been recognized as a qualified privilege which may be overcome by a sufficient showing of need. The Supreme Court indicated, in the very case in which it created the doctrine, that "[w]e do not mean to say that all [ ] materials obtained or prepared with an eye toward litigation are necessarily free from discovery in all cases."[43] Thus the courts repeatedly have held that the work product privilege is not absolute, but rather is only a qualified protection against disclosure,[44] and that the burden is on the party asserting it to establish its applicability.[45]

3. The Watkins Objections to the Subpoena

Counsel for Watkins has interposed three objections to the Committee's subpoenas for the drafts of the Watkins' memo: (1) the attorney-client privilege; (2) the work product doctrine; (3) and the risk that production would be held to be a waiver of the foregoing claimed privileges. The waiver issue will be addressed first before turning the privilege claims.

a. Compliance with a Congressional Subpoena Would Not Affect a General Waiver of the Attorney-Client or Work Product Privileges.

Counsel's concern that production of the subpoenaed drafts would result in a broad waiver of his client's common law privileges is without substantial foundation. The courts have long recognized that disclosure of documents in response to a court order is com-

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[38] *McGrain* v. *Daugherty,* 272 U.S. 135, 177 (1926); *Watkins* v. *United States,* 354 U.S. 178, 187 (1957); *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 504 n.15 (1975).

[39] See U.S. Constit., Art. I, sec. 5, cl. 2.

[40] *Westinghouse Electric Corporation* v. *Republic of the Philippines,* 951 F.2d 1414, 1423 (3d Cir. 1991).

[41] However, at least two federal circuits have held that disclosures to congressional committees do not waive claims of privilege elsewhere. See, *Florida House of Representatives* v. *U.S. Dept. of Commerce,* 961 F.2d 941, 946 (11th Cir. 1992); *Murphy* v. *Department of the Army,* 613 F.2d 1151, 1155 (D.C. Cir. 1979). Also see generally, Paul R. Rice, Attorney-Client Privilege in the United States, chaps. 8:2–8:15 and 9 (1993)(Rice).

[42] Some courts refuse to call the doctrine a privilege at all. In *City of Philadelphia* v. *Westinghouse Electric Corp.,* 210 F.Supp. 483, 485 (E.D. Pa. 1962), mandamus and prohibition denied sub nom. In *General Electric Corp.* v. *Kirpatrick,* 312 F.2d 742 (3d Cir. 1962), the court stated that the work product principle "is not a privilege at all; it is merely a requirement that very good cause be shown if the disclosure is made in the course of a lawyer's preparation of a case."

[43] *Hickman* v. *Taylor,* 329 U.S. 495, 511 (1974).

[44] See, e.g., *Central National Insurance Co.* v. *Medical Protective Co. of Forth Worth,* 107 F.R.D. 393, 395 (E.D. Mo. 1985); *Chepanno* v. *Champion International Corp.,* 104 F.R.D. 395, 396 (D. Ore. 1984).

[45] *Barclaysamerican Corp.* v. *Kane,* 746 F.2d 653, 656 (10th Cir. 1984); *Nutmeg Insurance Co.* v. *Atwell Vogel & Sterling,* 120 F.R.D. 504, 510 (W.D. La 1988).

pelled, not voluntary, and, therefore, such disclosure does not function as a waiver of privilege.[46]

Disclosure to Congress pursuant to a subpoena issued in the course of a legitimate investigation of the Executive Branch would similarly not affect a waiver. Two circuits and two district courts expressly have recognized in the context of public requests for information under the Freedom of Information Act (FOIA) that, in light of Congress' superior rights to information, disclosure to Congress of arguably privileged materials does not result in a waiver of any privilege under FOIA. In *Florida House of Representatives* v. *U.S. Department of Commerce,*[47] the appeals court held that because the FOIA exemption for "deliberative process" material may not be exercised against Congress, efforts to resist such a subpoena on grounds of privilege would be fruitless. Because the subpoena could not be resisted successfully, the court reasoned, providing the material to the Congress would not trigger a waiver of the privilege.

The claim of waiver previously was considered and rejected by the D.C. Circuit Court of Appeals in *Murphy* v. *Department of the Army.*[48] Murphy involved a request for a document under the Freedom of Information Act (FOIA)[49] from the Department of the Army which had been disclosed to a congressman. The requestor argued that even if the document fell within the deliberative process exemption of FOIA,[50] the disclosure constituted a waiver of the FOIA privilege. The appeals court rejected the argument, holding that with respect to the "doctrine of waiver," that "it is evident that the disclosure to the Congress could not have had that consequence." Congress, it stated, long has "carve[d] out for itself a special right of access to privileged information not shared by others."[51] If "every disclosure to Congress would be tantamount to a waiver of all privileges and exemptions, executive agencies inevitably would become more cautious in furnishing sensitive information to the legislative branch—a development at odds with public policy which encourages broad congressional access to governmental information."[52] The court concluded:

> For these reasons, we conclude that, to the extent that Congress has reserved to itself in Section 552(c)[now, 552(d)] the right to receive information not available to the general public, and actually does receive such information pursuant to that section (whether in the form of documents or otherwise), no waiver occurs of the privileges and

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[46] See, e.g., *Westinghouse Electric Corp.* v. *Republic of the Phillippines,* 951 F.2d 1414, 1427 n. 14 (3d Cir. 1991) (Holding that if the party that first invoked, but then withdrew its assertion of the privilege, and instead "continued to object to the subpoena and produced the documents only after being ordered to do so, we would not consider its disclosure of those documents would be voluntary.").

[47] 961 F. 2d 941, 946 (11th Cir.), cert. dismissed, 113 S. Ct. 446 (1992).

[48] 613 F.2d 1151, 1155 (D.C. Cir. 1979).

[49] 5 U.S.C. 552 (1994).

[50] 5 U.S.C. 552 (b)(5).

[51] 617 F.2d at 1155–56.

[52] Id., at 1156.

exemptions which are available to the executive branch under the FOIA with respect to the public at large.[53]

The concern raised by counsel for Watkins that disclosure would result in a waiver of privilege in future litigation is, therefore, wholly unwarranted in light of the compulsory and irresistible nature of the Committee's demands.[54] We turn now to consideration of the privilege objections to the Committee's subpoenas.

b. The attorney-client privilege does not shield the various versions of the Watkins memo from disclosure to this Committee.

As has been indicated above, it is within the sound discretion of Congress to decide whether to accept a claim of common law testimonial privilege. Unlike some other testimonial, privileges such as the privilege against compulsory self-incrimination, neither the attorney-client privilege nor the work product doctrine is rooted in the Constitution.[55] Moreover, congressional committees need not recognize claims of privilege in the same manner as would a court of law. A congressional committee must make its own determination regarding the propriety of recognizing the privilege in the course of an investigation taking into account the House's constitutionally-based responsibility to oversee the activities of the Executive Branch. In the circumstances of the situation before us, it is the Committee's considered judgment that Mr. Watkins' claims of privilege are not well-founded.

b.1 Watkins has not established that he entered into an attorney-client relationship with Moore.

The burden of establishing the existence of the attorney-client privilege rests with the party asserting the privilege. In re Grand Jury Investigation No. 83–2–35.[56] Blanket assertions of the privilege have been deemed "unacceptable," *SEC* v. *Gulf & Western Industries, Inc.,*[57] and are disfavored strongly.[58] The proponent conclusively must prove each element of the privilege, to wit: (1) a communication, (2) made in confidence and preserved, (3) to an attorney acting in his professional capacity, (4) by a client, (5) for the purpose of seeking or obtaining legal advice.[59] But the mere fact that an individual communicates with an attorney does not make his communication privileged.[60]

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[53] Id. See also, In re Sunrise Securities Litigation, 109 Bankr. 658, 1990 U.S. Dist. Lexis 168, U.S.D.C. E.D.Pa., Jan. 9, 1990 (same); In re Consolidated Litigation Concerning International Harvester's Disposition of Wisconsin Steel, 9 E.B.C. 1929, 1987 U.S. Dist. Lexis 10912, U.S.D.C. N.D. Ill. (same). Compare *FTC* v. *Owings-Corning Fiberglass Corp.,* 626 F.2d 966, 970 (D.C. Cir. 1980) (release to a congressional requestor is not deemed disclosure to public generally); *Exxon Corp.* v. *FTC,* 589 F.2d 582, 589 (D.C. Cir. 1978), cert. denied, 441 U.S. 943 (1979) (same); *Ashland Oil Co., Inc.* v. *FTC,* 548 F.2d 977, 979 (D.C. Cir. 1979) (same).

[54] It is to be noted that the American Bar Association Model Code of Professional Responsibility provides that "A lawyer may reveal: * * * [c]onfidences or secrets when * * * required by law or court order." DR 4–101 (c)(2). See also, *Meyerhoff* v. *Empire Fire & Marine Ins. Co.,* 497 F.2d 1190, 1195 (2d Cir. 1974); Application of Solomon Friend, 411 F. Supp. 776, 777 note (SDNY 1985), cases holding that an attorney's obligation of confidentiality is waived if it is necessary to defend against accusations of wrongful conduct.

[55] See *Mannes* v. *Meyers,* 419 U.S. 449, 466 n. 15 (1975).

[56] 737 F.2d 447, 450–51 (6th Cir. 1983).

[57] 518 F. Supp. 675, 682 (D.D.C. 1981).

[58] In re Grand Jury Investigation No. 83–2–35, supra, 737 F.2d at 454.

[59] See, e.g., 8 Wigmore, Evidence, Sec. 2292, at 554 (McNaughton rev. ed. 1964); *United States* v. *United Shoe Machinery Corp.,* 89 F. Supp. 357, 358–59 (D. Mass. 1950).

[60] See, e.g., *United States* v. *Costanzo,* 625 F.2d 465, 468 (3d Cir. 1980) ("[I]t is true that '[a] communication is not privileged simply because it is made by or to a person who happens to be a lawyer'."), cert. denied 472 U.S. 1017 (1985); *Diversified Industries, Inc.* v. *Meredith,* 572

The case law consistently has emphasized that one of the essential elements of the attorney-client privilege is that the attorney be acting as an attorney and that the communication be made for the purpose of securing legal services. The privilege therefore does not attach to incidental legal advice given by an attorney acting outside the scope of his role as attorney. "'Acting as a lawyer' encompasses the whole orbit of legal functions. When he acts as an advisor, the attorney must give predominantly legal advice to retain his client's privilege of non-disclosure, not solely, or even largely, business advice." [61]

In order to ascertain whether an attorney is acting in a legal or business advisory capacity, the courts have held it proper to question either the client or the attorney regarding the general nature of the attorney's services to his client, the scope of his authority as agent and the substance of matters which the attorney, as agent, is authorized to pass along to third parties.[62] Indeed, invocation of the privilege may be predicated on revealing facts tending to establish the existence of an attorney-client relation.

Finally, the client must intend that his communications with his lawyer are confidential and the confidentiality must be maintained subsequently.[63]

Because of the privilege's inhibitory effect on the truth-finding process and its impairment of the public's "right to every man's evidence," [64] modern liberal discovery rules have taken a narrow view of the privilege.[65] This tendency toward limiting the privilege is manifested most clearly in the strict standard of waiver.[66] Thus the voluntary disclosure of privileged information, whether by the client or the attorney with the client's consent, waives the privilege [67] because it destroys the confidentiality of a communication and thereby undermines the justification for preventing compelled disclosures.[68] Waiver need not be express,[69] nor is it necessary that the client waive the privilege knowingly.[70] Waiver may be evidenced by word or act,[71] but may be inferred from a failure to speak or act when words or action would be necessary to preserve

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F.2d 596, 602 (8th Cir. 1977) ("A communication is not privileged simply because it is made by or to a person who happens to be a lawyer"); *United States* v. *Tedder,* 801 F.2d 1437, 1442–43 (4th Cir. 1986) (Friend's communications with attorney held not privileged despite fact that friend was both a lawyer and colleague in same firm when he spoke to her not as a professional legal advisor, did not seek legal advice from her, and did not expect the communications to remain confidential.).

[61] *Zenith Radio Corp.* v. *Radio Corp. of America,* 121 F.Supp. 792, 794 (D. Del. 1954) (emphasis supplied).

[62] *Colton* v. *U.S.,* 306 F.2d 633, 636, 638 (2d Cir. 1962); *U.S.* v. *Tellier,* 255 F.2d 441 (2d Cir. 1958); *J.P. Foley & Co., Inc.* v. *Vanderbilt,* 65 FRD 523, 526–27 (S.D.N.Y. 1974).

[63] Rice, supra, at 6:1, 6:2, 6:30, 9:1.

[64] 8 J. Wigmore § 2192, at 70.

[65] *Magida* ex rel. *Vilcon Detinning Co.* v. *Continental Can Co.,* 12 F.R.D. 74, 77 (S.D.N.Y. 1951).

[66] See, e.g., *Permian Corp.* v. *United States,* 665 F.2d 1214, 1219 (D.C. Cir. 1981); *United States* v. *AT & T Co.,* 642 F.2d 1285, 1299 (D.C. Cir. 1980).

[67] 8 J. Wigmore, § 2327, at 632–39.

[68] *United States* v. *AT & T Co.,* 642 F.2d 1285, 1299 (D.C. Cir. 1980) "[t]he mere showing of voluntary disclosure will generally suffice to show waiver of the attorney-client privilege."); In re Horowitz, 482 F.2d 72, 82 (2d Cir.) cert. denied, 414 U.S. 867 (1973).

[69] *Blackburn* v. *Crawford,* 70 U.S. (3 Wall.) 175, 194 (1965).

[70] In re Grand Jury Investigation of Ocean Transp., 604 F.2d 672 (D.C. Cir.), cert. denied, 444 U.S. 915 (1979).

[71] Magida ex rel. *Vulcan Determining Co.* v. *Continental Can Co.,* 12 F.R.D. 74, 77 (S.D.N.Y. 1951).

confidentiality.[72] Courts regularly hold that the privilege is waived as to the material disclosed when the client or his attorney deliberately discloses the contents of a privileged communication, such as when answering interrogatories, testifying in court or at examination before trial, submitting affidavits or pleadings to the Court, or in transacting business with a third party.[73]

Furthermore, the courts have held that less than full disclosure often will cause a waiver, not only as to disclosed communications, but also as to communications relating to the same subject matter that were not disclosed themselves.[74] By partial disclosure, the client may be waiving voluntarily the privilege as to that which he considers favorable to his position, but attempting to invoke the privilege as to the remaining material, which he considers unfavorable.[75] Selective assertion or disclosure usually involves a material issue in the proceeding, and there is a great likelihood that the information disclosed is false or intended to mislead the other party.[76] Thus, pleading an "advice of counsel" defense, which puts the attorney's advice in issue,[77] has been held to waive the privilege as to all communications relating to that advice. The rationale for the subject matter waiver rule is one of fairness. Professor Wigmore has stated the principle as follows: "[W]hen [the client's] conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder. It therefore is designed to prevent the client from using the attorney-client privilege offensively, as an additional weapon."

The courts also have limited severely the attorney-client privilege through the development of an implied waiver doctrine. Thus, where a client shares his attorney-client communications with a third party, the communications between attorney and client are no longer strictly "confidential," and the client has waived his privilege over them.[78] Even if the client attempts to keep communications confidential by having the third party agree not to disclose the communications to anyone else, the courts will still consider "confidentiality" between attorney and client breached and the communication no longer privileged.[79] Courts have applied this concept of confidentiality narrowly to prevent corporations from

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[72] Id.

[73] 8 J. Wigmore, § 2327.

[74] *Teachers Ins. & Annuity Assn. of America* v. *Shamrock Broadcasting Co.,* 521 F.Supp. 638, 641 (S.D.N.Y. 1981); *R.J. Hereley & Sons Co.* v. *Stotler & Co.,* 87 F.R.D. 358, 359 (N.D. Ill. 1980); *Hercules, Inc.* v. *Exxon Corp.,* 434 F.Supp. 136, 156 (D. Del. 1977); *Duplan Corp.* v. *Deering Milliken, Inc.,* 397 F.Supp. 1146, 1161–62 (D.S.C. 1974).

[75] *Perrigrion* v. *Bergen Brunswig Corp.,* 77 F.R.D. 455, 461 (N.D. Calif. 1978); *Hercules, Inc.* v. *Exxon Corp.,* 434 F. Supp. 136, 156 (D. Eel. 1977); *Duplan* v. *Deering Milliken,* 397 F.Supp. 1146, 1161–62 (D.S.C. 1974); *AT & T* v. *United Tel. Co.,* 60 F.R.D. 177, 188–86 (M.D. Gla. 1973).

[76] *United States* v. *Aronoff,* 466 F.Supp. 855, 862 (S.D.N.Y. 1979).

[77] E.g., *United States* v. *Woodall,* 438 F.2d 1317, 1323–24 (5th Cir. 1970), cert. denied, 403 U.S. 933 (1971); *Transworld Airlines* v. *Hughes,* 332 F.2d 602, 615 (2d Cir. 1964), cert. dismissed, 380 U.S. 248 (1965); *Barr Marine Prods.* v. *Borg-Warner Corp.,* 84 F.R.D. 631, 635 (E.D. Pa. 1979); *Hangards, Inc.* v. *Johnson & Johnson,* 413 F.Supp. 926, 929 (N.D. Calif. 1976).

[78] See, e.g., *United States* v. *El Paso Co.,* 682 F.2d 530, 539, 540 (5th Cir. 1982) (Creating documents with knowledge that independent accountants may need access to them to complete an audit waives privilege.); *Permian Corp.* v. *United states,* 665 F.2d 1214, 1219 (D.C. Cir. 1981) (Disclosure of documents to SEC waives privilege); *United States* v. *Miller,* 660 F.2d 563, 567–68 (5th Cir. 1981) (Previous delivery of accounting books to IRS vitiates privilege.); *United States* **v.** *Kelsey-Hayes Wheel Co.,* 15 F.R.D. 461, 464 (E.D. Mich. 1954) (Privilege waived on disclosure to Justice Department).

[79] 8 J. Wigmore, Evidence, § 2367 at 636 (McNaughton rev. ed. 1961).

sharing an attorney-client communication with an ally and then shielding the communication from a grand jury or adversary.[80] As a general rule, courts also apply the waiver rule to disclosures made to government agencies.[81] Thus a person or corporation who voluntarily discloses confidential attorney-client communications to a government agency loses the right to later assert privilege for those communications.

While some lower courts have adopted a "limited waiver" rule, which allows corporations to share their confidential attorney-client communications with agencies such as the SEC without having to waive the privileged status of these documents against other parties,[82] it is a distinctly minority view. The prevailing view, enunciated in the most recent decisions of the Second,[83] Fourth,[84] and District of Columbia Circuits,[85] holds that "if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information, as well as 'the details underlying the data which was to be published,' will not enjoy the privilege."[86]

The appeals court in In re *Sealed* Case explained the rationale and scope of the implied waiver rule as follows:

> The implied waiver doctrine has been more fully developed, however, in the context of the attorney-client privilege. Any disclosure inconsistent with maintaining the confidential nature of the attorney client relationship waives the privilege. When a party reveals a part of a privileged communication in order to gain an advantage in litigation, it waives the privilege as to all other communications relating to the same subject matter because "the privilege of secret consultation is intended only as an incidental means of defense and not as an independent means of attack, and to use it in the latter character is to abandon it in the former."
>
> A simple principle unites the various applications of the implied waiver doctrine. Courts need not allow a claim of privilege when the party claiming the privilege seeks to use it in a way that is not consistent with the purpose of the privilege. Thus, since the purpose of the attorney-client privilege is to protect the confidentiality of attorney-client communications in order to foster candor within the attorney-client relationship, voluntary breach of confidence for

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[80] *Permian Corp.* v. *U.S.,* 665 F.2d 1214, 1221–22 (D.C. Cir. 1981).

[81] See, e.g., *United States* v. *Miller,* 660 F.2d 563, 567–68 (5th Cir. 1981) (disclosure to IRS); In re Grand Jury Investigation of Ocean Transp., 604 F.2d 672 (D.C. Cir. 1979), cert. denied, 444 U.S. 915 (1979) (to Antitrust Div. of Dept. of Justice); *Donovan* v. *Fitzsimmons,* 90 F.R.D. 583, 585 (N.D. Ill. 1981) (to Dept. of Labor); *Litton Systems, Inc.* v. *American Tel. & Tel. Co.,* 27 Fed. R. Serv. 2d (Callaghan) 819 (S.D.N.Y. 1979) (to district attorney); In re Penn. Cent. Commercial Paper Litig., 61 F.R.D. 453, 462–64 (S.D.N.Y. 1973) (to SEC); *D'Ippolito* v. *Cities Serv. Co.,* 39 F.R.D. 610 (S.D.N.Y. 1965) (to Antitrust Div. of Dept. of Justice).

[82] See, e.g., *Diversified Industries* v. *Meredith,* 572 F.2d 596, 611 (8th Cir. 1977); *Byrnes* v. *IDS Realty Trust Co.,* 85 F.R.D. 679, 687–89 (S.D.N.Y. 1980); In re Grand Jury Subpoena, 478 F.Supp. 368, 372–73 (E.D. Wisc. 1979).

[83] In re John Doe Corporation, 675 F.2d 482 (2d Cir. 1982).

[84] In re Martin Marietta Corp., 856 F.2d 619 (4th Cir. 1988); *United States* v. *(Under Seal),* 748 F.2d 871, 875 (4th Cir. 1984); In re Grand Jury Proceedings, 727 F.2d 1352, 1356 (4th Cir. 1984).

[85] In re Subpoena Duces Tecum, 738 F.2d 1367 (D.C. Cir. 1984); In re Sealed Case, 676 F.2d 793 (D.C. Cir. 1982); *Permian Corp.* v. *United States,* 665 F.2d 1214 (D.C. Cir. 1981).

[86] In re Martin Marietta Corp., 856 F.2d 619, 623 (4th Cir. 1988).

> tactical purposes waives the privilege. Disclosure is inconsistent with confidentiality, and courts need not permit hide-and-seek manipulation of confidence in order to foster candor.[87]

The testimony before this Committee of Mr. Watkins, Mr. Moore and Ms. Thomasson, their conduct during the evolution of the memo, as well as the conduct of the White House in handling the disputed documents, belie the existence of a valid claim of attorney-client privilege. There is substantial doubt whether there was in fact an attorney-client relation between Moore and Watkins and whether Moore was actually performing legal services for Watkins. There is no doubt that even if such a relation arose at some early time, the necessary maintenance of confidentiality was not maintained and the privilege, if it existed at all, was waived.

Mr. Watkins' testimony before this Committee on January 16, 1996, prior to the revelation that numerous drafts pre-and post-dating the soul cleansing memo were discovered in Thomasson's files, described Moore's role in the creation of that document as solely that of a "scribe:" "I dictated this memorandum * * * I had a scribe to actually write it."[88] It is only when the existence of the numerous drafts of the document became known that a legal relationship was concocted. Watkins' legal memo concedes Moore was a scribe, but also claims he was advising Watkins "how to prepare the Memorandum to Counsel so that it would be considered privileged and confidential." More to the point, Mr. Watkins is said to have believed that "Moore's assistance, and status as an attorney, would help preserve the privileged and confidential status of the document." To prove Mr. Moore's value, Watkins' counsels' memo points to the fact that each and every version was stamped "PRIVILEGED AND CONFIDENTIAL." But it is hardly necessary to have an attorney to wield such a stamp. What is necessary is that one's attorney perform legal services.

Mr. Moore testified that he certainly did not believe he was acting as Watkins' private attorney in this matter.[89] Rather, only allows that Watkins could have "a colorable claim [of privilege] to assert."[90] Nor does Moore directly claim he was Watkins' attorney in this matter in his official capacity as "special counsel" to that Office. In describing how he "gave" legal advice, he stated that Watkins would come to him about a legal issue and he would go to the White House Counsel's Office for the answer and then convey it to Watkins.[91]

In fact, Moore was fresh out of law school and a legal tyro, while Watkins throughout this entire period had a major Washington law firm, Hogan & Hartson, on retainer. Indeed, Watkins' present counsel asserts that many, if not all, of the drafts in question were sent to Mr. Cobb of that firm "for his review and advice." Yet the privileged relationship that is asserted is between Moore and Watkins and not Cobb and Watkins.

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[87] 676 F.2d 793, 818 (D.C. Cir. 1982).
[88] Travel Office Hearing, *supra,* at 14.
[89] Dep. Tr. at 64-65.
[90] *Id.* at 65.
[91] *Id.* at 66.

Close scrutiny of the "soul cleansing" memo, which is asserted to contain the same content as some of the drafts now in contest, does not indicate that it is a legal document or one that required the application of legal skills. It is essentially a factual recitation, from Watkins' point of reference, of what happened during the period that led to the May 1993 firings of the Travel Office staff, why it happened, and why the internal review was inaccurate. The Travel Office was squarely within Mr. Watkins' official jurisdiction. This document, then, readily can be seen as predominantly relating to the business of the Office of Management and Administration rather than as a document that dealt with legal issues or even needed more than minimal legal expertise.

In sum, this aspect of the claim of attorney-client privilege appears to be nothing more than a transparent afterthought. There was no intent to create the requisite relation; and the documents created related to the business of the Office of Management and Administration.

Finally, even if an attorney-client relationship could be established, it certainly was waived by the early sharing of the ultimately-revealed draft with Patsy Thomasson, by the discussions of that draft by Watkins and Moore with Thomasson, and by its wide distribution after its discovery by the White House to other White House personnel and the media. It would be specious to contend that the waiver is limited only to Thomasson's draft. Watkins' counsel has asserted that the content of the withheld drafts is similar. That alone suffices to vitiate the privilege for all other extant drafts. Selective assertion and disclosure is not tolerated by the courts. It is equally unacceptable to this Committee.

b.2 The Claim of Protection under the Work Product Doctrine is not Sustainable.

Watkins claims that the work product doctrine protects the withheld documents because they were the "work of an attorney is preparation for litigation" and contain "subjective beliefs, impressions, and strategies" which are protected as "opinion" work product. In fact, the work product doctrine is not applicable in the congressional forum; but even if applicable, it cannot be sustained under the circumstances of this situation. It is problematic that the documents in question actually were prepared for litigation. In any event, the Committee's need for the documents would demonstrate the heightened need necessary when opinion work product is involved if this matter were before a court. It is plain that the qualified privilege afforded has been waived by Watkins' conduct.

The qualified immunity from discovery of an attorney's work product is recognized by the Supreme Court[92] and codified in Rule 23(b)(3) of the Federal Rules of Civil Procedure.[93] The Rule pro-

[92] Hickman v. Taylor, 329 U.S. 495 (1947).

[93] Rule 26(b)(3) provides in pertinent part: "Trial Preparation: Materials * * * [A] party may obtain discovery of documents and tangible things * * * prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental im-

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vides that in a civil action there is qualified immunity from discovery when materials are:

1. "documents and tangible things;"
2. "prepared in anticipation of litigation or for trial;" and
3. "by or for another party or for that other party's representative."

To overcome the qualified immunity, the party seeking discovery must make a showing of: (1) substantial need for the materials; and (2) inability to obtain the substantial equivalent of the information without undue hardship. Upon such a showing, the qualified immunity from discovery is overcome and the court will order the materials produced.[94]

The federal rules do not define what is meant by the term "litigation" or "in anticipation of." However, the Special Masters' Guidelines for the Resolution Privilege Claims, approved and adopted by the court in *United States* v. *American Telephone & Telegraph Co.,*[95] contain a detailed discussion of both phrases that reflects precedent to that time and has been influential since then. The Special Masters defined "litigation" as including "a proceeding in a court or administrative tribunal in which the parties have the right to cross-examine witnesses or to subject an opposing party's presentation of proof to equivalent disputation." 86 F.R.D. at 627. On its face, the definition would not apply to Congress, which of course is not a court or administrative tribunal, or to a congressional investigative hearing which, while often confrontational, does not afford an opportunity for witnesses to cross-examine other witness' or present rebuttal testimony as would be the case in the adversarial adjudicative forum. We are aware of no court that has held the work product doctrine applicable to a legislative proceeding. The definition is also consonant with the language of Rule 26(b)(3) which exclusively uses terms such as "party", "litigation", "trial" and "discovery" which are alien to the legislative hearing process.[96]

The "in anticipation" element was defined by the Special Masters to mean:

> any time after initiation of the proceeding or such earlier time as the party who normally would initiate the proceeding had tentatively formulated a claim, demand, or charge. When the material was prepared by a party who normally would initiate such a proceeding, that person must establish the date when the claim, demand, or charge was tentatively formulated. When the material was prepared by a potential defendant or respondent, that person must establish the date when he received a demand or warning of charges or information from an outside source that a claim, demand, or charge was in prospect.[97]

The courts have made it clear that while there is no requirement that litigation have already commenced in order for the work prod-

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pressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

[94] See, generally 8 Wright, Miller and Marcus, Federal Practice and Procedure, Sections 2021–2028 (1994).

[95] 86 F.R.D. 603 (D.D.C. 1980).

[96] Wright, Miller and Marcus, supra, Section 2024 at 338–357; 86 F.R.D. at 627–30.

[97] 86 F.R.D. at 627.

uct doctrine to be operative, there must be "a more immediate showing than the remote possibility of litigation."[98] "[F]or documents to qualify as attorney work product, there must be an identifiable prospect of litigation (i.e., specific claims that already have arisen) at the time the documents were prepared."[99] One appellate court recently recognized that "because litigation is an ever-present possibility in American life, it is more often the case than not that new events are documented with the general possibility of litigation in mind. Yet '[t]he mere fact that litigation does ensue does not, by itself, cloak materials' with work product immunity. The document must be prepared because of the prospect of litigation when the preparer faces an actual claim or potential claim following an actual event or series of events that reasonably could result in litigation."[100] Materials prepared in the ordinary course of business will not be protected from production, even if the party is aware that the document may also be useful in the event of litigation.[101] Similarly, "[t]he acts performed by a public employee in the performance of his official duties are not 'prepared in anticipation of litigation or for trial' merely by virtue of the fact that they are likely to be the subject of later litigation."[102]

Rule 26(b)(3) provides heightened protection for "mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation." This protection against disclosure, however, is not absolute and has been held to yield in appropriate circumstances.[103] Thus, when mental impressions are at issue in the case and the need for the material is compelling, they have been held discoverable.[104] Courts consistently have denied the protection in such "at issue" cases where complete or partial lack of recollection of critical meetings or events has been claimed.[105] The protection has been denied where what was at issue was the reason a government prosecutor instituted an action.[106]

Assuming the subject documents are not covered by attorney-client privilege, it would appear that a court would have difficulty in finding that the documents were prepared "in anticipation of litigation." We are not aware of case precedent holding that a congressional investigative hearing is a proceeding meant to covered by Rule 26(b)(3). The qualified privilege recognized by the rule was de-

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[98] *Garfinkle* v. *Arcada National Corp.,* 64 F.R.D. 688, 690 (SDNY 1974).

[99] *Fox* v. *California Sierra Financial Services,* 120 F.R.D. 520, 525 (N.D. Calif. 1988).

[100] *National Union Fire Ins. Co.* v. *Murray Sheet Metal Co.,* 967 F.2d 980, 984 (4th Cir. 1992).

[101] *Smith* v. *Conway Organization,* 154 F.R.D. 73, 78 (SDNY 1994). See also *Litton Industries* v. *Lehman Bros. Kuhn Loeb, Inc.,* 125 F.R.D. 51, 54-55 (SDNY 1989).

[102] *Grossman* v. *Schwartz,* 125 F.R.D. 376, 388 (SDNY 1989); *Department of Economic Development* v. *Arthur Anderson & Co.,* 139 F.R.D. 295, 700 (SDNY 1991).

[103] *In re John Doe Corporation,* 675 F.2d 482, 492 (2d Cir. 1982).

[104] *Holmgren* v. *State Farm Mutual Ins. Co.,* 976 F.2d 573, 577 (9th Cir. 1992) (claim of bad faith in the settlement process); *Handguards Inc.* v. *Johnson & Johnson,* 413 F.Supp 926, 931-31 (N.D. Calif. 1976) (bad faith in instituting litigation).

[105] *Erlich* v. *Howe,* 848 F.Supp 842, 492–93 (SDNY 1994); *Redvanly* v. *NYNEX Corp.,* 152 F.R.D. 460, 468–69 (SDNY 1993); *Doubleday* v. *Ruh,* 149 F.R.D. 601, 608 (E.D. Cal. 1993); *In re Worlds of Wonder Securities Litigation,* 147 F.R.D. 208, 212 (N.D. Cal. 1992).

[106] *Doubleday* v. *Ruh,* supra, 149 F.R.D. at 608 ("Here, plaintiff asserts that the main issue of her case is the affect [sic] defendants had on the district attorney's decision to prosecute".); *EEOC* v. *Anchor Continental, Inc.,* 74 F.R.D. 523, 526–28 (D.S.C. 1977) ("However, there must be an exception to this [work product] rule when the Court's in camera inspection reveals that the plaintiff, a branch of the United States government, has little faith in its case, has little evidence to go on and hopes to be able to prove the case through discovery or force a settlement upon a defendant who might not be able to stand the financial burden of defending itself".).

signed for the adversary process and, like the attorney-client privilege, is likely to be held limited to the needs of that forum. It is also problematic whether a successful argument could be made that any of the documents were produced in the reasonably foreseeable likelihood that Watkins would be a party in any civil or criminal action.

Further, even if the documents fall within the scope of the rule, the Committee would likely be able to demonstrate the heightened level of need required when opinion work product is involved. The Committee's inquiry has been concerned in large part with the motivations of the participants in the Travel Office matter. Indeed, claims of lack of complete or only partial recollections of meetings or events have consistently impeded the progress of the Committee's investigation. The case law alluded to above indicates that in such circumstances the courts would deny work product protection.

Additionally, the actions of Watkins and the White House in dealing with the soul cleansing memo, recounted above in the discussion of the issue of waiver of the attorney-client privilege, are equally applicable and compelling here.

Finally, it is to be recalled that the burden is on the claimant to demonstrate the applicability of the privilege claimed, and in the end the determination whether to accept it rests in the sound discretion of the Chairman and the Committee.

AUTHORITY

The Committee on Government Reform and Oversight is a duly established Committee of the House of Representatives, pursuant to the Rules of the House of Representatives, 104th Congress, Second Session.

Rule 10 grants the Committee on Government Reform and Oversight jurisdiction over, inter alia, "The overall economy, efficiency and management of government operations and activities * * *" Rule 10 further states that the Committee "may at any time conduct investigations of any matter * * *"

The Rules of the Committee on Government Reform and Oversight, approved on January 10, 1995, provide that the Chairman "shall: (d) Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the committee."

Pursuant, therefore, to its responsibilities and authority as mandated by the House of Representatives, the Committee has issued subpoenas for documents and information which, as prescribed by Committee rules, were deemed essential to its inquiry. The subpoenas which form the basis of the recommended resolution were issued in full conformance with this authority.

As indicated above, White House Counsel John M. Quinn, David Watkins, and Matthew Moore were summoned to furnish materials in their custody and control pursuant to valid, duly executed subpoenas of the Committee, but they deliberately failed to comply with the terms of said subpoena.

CHRONOLOGY OF CORRESPONDENCE [107]

Date	To	From	Subject
June 1, 1993	Hon. John Conyers, Jr.[108]	Hon. William F. Clinger, Jr.[109].	Request Investigation.
June 16, 1993	Thomas F. McLarty [110]	William F. Clinger, Jr.	Ask Questions.
		Hon. Robert Michel [111]	
		Hon. Newt Gingrich [112]	
		Hon. Richard Armey [113]	
		Hon. Henry Hyde [114]	
June 18, 1993	William F. Clinger, Jr.	Thomas F. McLarty	Announce Mgmt. Review.
July 2, 1993	Robert Michel	Thomas F. McLarty	Release Mgmt. Review.
July 13, 1993	Hon. Jack Brooks [115]	President Bill Clinton	Promise Cooperation.
July 15, 1993	William F. Clinger, Jr.	John Conyers, Jr.	Refer to GAO.
August 6, 1993	President Bill Clinton	Robert Michel	Asks Questions.
		Dick Armey	
		Newt Gingrich	
		Henry Hyde	
		William F. Clinger, Jr.	
August 24, 1993	William F. Clinger, Jr.	Thomas F. McLarty	Refer to Justice Department.
October 11, 1993	William F. Clinger, Jr.	Bernard W. Nussbaum [116]	Refer to Justice Department.
October 15, 1993	Bernard W. Nussbaum	William F. Clinger, Jr.	Asks Questions.
October 26, 1993	William F. Clinger, Jr.	Bernard W. Nussbaum	Refer to Justice Department.
February 24, 1994	President Bill Clinton	William F. Clinger, Jr.	Asks Questions.
		Hon. Frank Wolf [117]	
		Richard Armey	
		Henry Hyde	
February 24, 1994	Janet Reno [118]	William F. Clinger, Jr.	Asks Questions.
		Henry J. Hyde	
		Richard Armey	
September 13, 1994	Joel I. Klein [119]	Kevin Sabo [120]	Request for Documents.
September 20, 1994	Philip Lader [121]	William F. Clinger, Jr.	Request for Documents.
April 24, 1995	Steven Riewerts [122]	Tichenor & Associates [123]	Accounting Recommendations.
May 4, 1995	William F. Clinger, Jr.	Abner J. Mikva [124]	Limited Document Access.
May 11, 1995	Phil Larsen [125]	Jonathan R. Yarowsky [126]	Document Review Procedures.
May 31, 1995	Abner Mikva	William F. Clinger, Jr.	Request for Documents.
June 1, 1995	William F. Clinger, Jr.	Abner J. Mikva	Requests a Meeting.
June 14, 1995	Abner Mikva	William F. Clinger, Jr.	Requests for Interviews.
June 16, 1995	Barbara Comstock [127]	Jonathan R. Yarowsky	Promise of Documents.
June 26, 1995	Abner Mikva	Kevin Sabo	Procedures for Documents.
June 29, 1995	William F. Clinger, Jr.	Abner J. Mikva	Promise of Documents.
July 7, 1995	Kevin Sabo	Jonathan R. Yarowsky	Limited Access to Documents.
July 13, 1995	Abner Mikva	William F. Clinger, Jr.	Request for Documents.
July 15, 1995	William F. Clinger. Jr.	Abner J. Mikva	Procedures for Documents.
July 17, 1995	Abner Mikva	William F. Clinger, Jr.	Requests for Documents.
July 19, 1995	Phil Larsen	Natalie R. Williams [128]	Limited Access to Documents.
July 20, 1995	Abner Mikva	William F. Clinger, Jr.	Requests for Information.
July 25, 1995	William F. Clinger, Jr.	Abner J. Mikva	Provides Limited Information.
July 26, 1995	Abner Mikva	William F. Clinger, Jr.	Requests for Information.
August 1, 1995	Natalie Williams	Phil Larsen	Procedures for Documents.
August 2, 1995	Phil Larsen	Natalie Williams	Limited Access to Documents
August 9, 1995	Phil Larsen	Natalie Williams	Limited Access to Documents.
August 17, 1995	Abner Mikva	Kevin Sabo	Procedures for Documents.
August 23, 1995	Kevin Sabo	Jane C. Sherburne [129]	Procedures for Documents.
August 24, 1995	Abner Mikva	Kevin Sabo	Procedures for Documents.
August 25, 1995	Phil Larsen	Natalie Williams	Promise of Documents.
August 25, 1995	Barbara Comstock	Natalie Williams	Limited Access to Documents.
August 25, 1995	Natalie Williams	Phil Larsen	Request for Documents.
August 28, 1995	Barbara Comstock	Natalie Williams	Limited Access to Documents.
August 30, 1995	William F. Clinger, Jr.	Abner J. Mikva	Answers Questions.
September 1, 1995	Barbara Comstock	Jane C. Sherburne	Answers Questions.
September 1, 1995	Kevin Sabo	Jane C. Sherburne	Procedures for Interviews
September 5, 1995	Barbara Comstock	Natalie Williams	Limited Access to Documents.
September 6, 1995	Abner Mikva	William F. Clinger, Jr.	Request for Documents.
September 6, 1995	Jane C. Sherburne	Barbara K. Bracher [130]	Requests Information.
September 8, 1995	William F. Clinger, Jr.	Abner J. Mikva	Procedures for Documents.
September 12, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.

CHRONOLOGY OF CORRESPONDENCE [107]—Continued

Date	To	From	Subject
September 15, 1995	Barbara K. Bracher	Jane C. Sherburne	Answers Questions.
September 18, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
September 18, 1995	Abner Mikva	William F. Clinger, Jr.	Request for Documents.
September 18, 1995	Abner Mikva	William F. Clinger, Jr.	Request for Documents.
September 20, 1995	Jane Sherburne	Barbara K. Bracher	Request for Documents.
September 20, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
September 22, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
September 25, 1995	Barbara K. Bracher	Jane Sherburne	Limited Access to Documents.
September 27, 1995	William F. Clinger, Jr.	Abner J. Mikva	Answers Questions.
September 28, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
October 4, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
October 5, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
October 11, 1995	Terry Good [131]	William F. Clinger, Jr.	Request for Documents.
October 11, 1995	Abner Mikva	William F. Clinger, Jr.	Request for Documents.
October 12, 1995	Kevin Sabo	Jane Sherburne	Procedures for Documents.
October 13, 1995	Barbara K. Bracher	Jane C. Sherburne	Promise to Produce Documents.
October 13, 1995	Jane Sherburne	Barbara K. Bracher	Request for Documents.
October 13, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
October 13, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
October 16, 1995	Barbara Comstock	Natalie Williams	Limited Access to Documents.
October 17, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
October 18, 1995	William F. Clinger, Jr.	Abner J. Mikva	Promise to Produce Documents.
October 20, 1995	Jane Sherburne	Barbara K. Bracher	Request for Documents.
October 21, 1995	Barbara K. Bracher	Jane C. Sherburne	Promise to Produce Documents.
October 23, 1995	Abner Mikva	William F. Clinger, Jr.	Clarification of Doc. Request.
November 2, 1995	Jane Sherburne	Barbara Comstock	Clarification of Doc. Request.
November 6, 1995	Barbara K. Bracher	Jane C. Sherburne	Procedures for Documents.
November 8, 1995	Jane Sherburne	Barbara K. Bracher	Procedures for Documents.
November 13, 1995	Jane C. Sherburne	Barbara K. Bracher	Procedures for Documents.
November 14, 1995	John M. Quinn [132]	William F. Clinger, Jr.	Request for Documents.
November 14, 1995	Barbara Bracher	Jane C. Sherburne	Limited Access to Documents.
November 29, 1995	John M. Quinn	William F. Clinger, Jr.	Request for Documents.
November 29, 1995	Jane C. Sherburne	Barbara K. Bracher	Clarification of Doc. Request.
December 14, 1995	John M. Quinn	William F. Clinger, Jr.	Request for Documents.
December 20, 1995	William F. Clinger, Jr.	John M. Quinn	Promise to Produce Documents.
December 22, 1995	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
January 2, 1996	Thomas F. McLarty	William F. Clinger, Jr.	Request for Information.
January 3, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
January 11, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Documents.
January 16, 1996	President Bill Clinton	William F. Clinger, Jr.	Request for Cooperation.
January 16, 1996	Barbara K. Bracher	Christopher D. Cerf [133]	Limited Access to Documents.
January 17, 1996	William F. Clinger, Jr.	John M. Quinn	Answers to Questions.
January 18, 1996	Barbara K. Bracher	Jane C. Sherburne	Promise to Produce Documents.
January 19, 1996	Barbara K. Bracher	Christopher D. Cerf	Limited Access to Documents.
January 22, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
January 22, 1996	Barbara Bracher	Jane C. Sherburne	Limited Access to Documents.
January 22, 1996	William F. Clinger, Jr.	John M. Quinn	Promise to Produce Documents.
January 22, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Information.
January 23, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Cooperation.
January 23, 1996	William F. Clinger, Jr.	John M. Quinn	Limited Access to Information.
January 24, 1996	William F. Clinger, Jr.	John M. Quinn	Limited Access to Information.
January 25, 1996	William F. Clinger, Jr.	John M. Quinn	Answers to Questions.
January 29, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
February 1, 1996	President Bill Clinton	William F. Clinger, Jr.	Request for Cooperation.
February 1, 1996	William F. Clinger, Jr.	John M. Quinn	Limited Access to Information.
February 2, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
February 5, 1996	William F. Clinger, Jr.	John M. Quinn	Limited Access to Information.
February 6, 1996	John M. Quinn	William F. Clinger, Jr.	Clarification of Doc. Request.
February 9, 1996	John M. Quinn	William F. Clinger, Jr.	Procedures for Documents.
February 14, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
February 15, 1996	Hillary Clinton, Esq.	William F. Clinger, Jr.	Request for Information.
February 26, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Information
February 26, 1996	William F. Clinger, Jr.	John M. Quinn	Procedures for Documents.
February 27, 1996	Barbara K. Bracher	Jane C. Sherburne	Answers Questions.

CHRONOLOGY OF CORRESPONDENCE [107]—Continued

Date	To	From	Subject
February 27, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
March 4, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
March 5, 1996	Kevin Sabo	Jane C. Sherburne	Answers Questions.
March 8, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
March 12, 1996	John M. Quinn	William F. Clinger, Jr.	Notification of Depositions.
March 15, 1996	William F. Clinger, Jr.	John M. Quinn	Answers Questions.
March 15, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
March 20, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Privilege Log.
March 21, 1996	William F. Clinger, Jr.	David E. Kendall [134]	Responses of Mrs. Clinton.
March 21, 1996	William F. Clinger, Jr.	John M. Quinn	Request Cont. Rolling Prod.
March 26, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Information.
March 27, 1996	William F. Clinger, Jr.	John M. Quinn	Answers Questions.
March 27, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Information.
March 27, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Information.
March 28, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Information.
March 28, 1996	William F. Clinger, Jr.	Jane C. Sherburne	Limited Access to Documents.
April 1, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Information.
April 2, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
April 3, 1996	William F. Clinger, Jr.	John M. Quinn	Promise to Provide Information.
April 3, 1996	William F. Clinger, Jr.	John M. Quinn	Answers Questions.
April 4, 1996	John M. Quinn	William F. Clinger, Jr.	Request for Documents.
April 5, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
April 5, 1996	William F. Clinger, Jr.	John M. Quinn	Answers Questions.
April 9, 1996	William F. Clinger, Jr.	Jane C. Sherburne	Answers Questions.
April 11, 1996	William F. Clinger, Jr.	Jane C. Sherburne	Answers Questions.
April 18, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
April 23, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
April 24, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
April 24, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
May 2, 1996	John M. Quinn	William F. Clinger, Jr.	Request Final Prod. of Docs.
May 2, 1996	William F. Clinger, Jr.	John M. Quinn	Claims Politicalization.
May 3, 1996	William F. Clinger, Jr.	John M. Quinn	Discuss Docs. Withheld.
May 3, 1996	Cardiss Collins	William F. Clinger, Jr.	Seeking Assistance.
May 6, 1996	John M. Quinn	William F. Clinger, Jr.	Demand Final Prod.
May 6, 1996	William F. Clinger, Jr.	John M. Quinn	Suggest More Compromise.
May 7, 1996	John M. Quinn	William F. Clinger, Jr.	Requests Executive Priv. Claim.
May 7, 1996	Barbara K. Bracher	Jane C. Sherburne	Limited Access to Documents.
May 9, 1996	William F. Clinger, Jr.	John M. Quinn	Claims Executive Privilege.

[107] This correspondence has been made public in Correspondence between the White House and Congress in the Proceedings Against John M. Quinn, David Watkins, and Matthew Moore, Committee Investigation into the White House Travel Officer Matter, House Committee on Government Reform and Oversight, 104th Congress, 2d Session, May 1996.

[108] John Conyers, at the time of this letter was the Chairman of the House Committee on Government Operations. He is currently the Ranking Minority Member of the House Committee on the Judiciary.

[109] William F. Clinger, Jr., at the time of this letter, was the Ranking Minority Member of the House Committee on Government Operations. He is currently Chairman of the House Committee on Government Reform and Oversight.

[110] Thomas F. McLarty, at the time of this letter, was the White House Chief of Staff.

[111] Robert Michel, at the time of this letter, was the Minority Leader in the U.S. House of Representatives. He currently is retired from the U.S. House.

[112] Newt Gingrich, at the time of this letter, was the Minority Whip in the U.S. House of Representatives. He currently is the Speaker of the U.S. House.

[113] Richard Armey, at the time of this letter, was the Chairman of the Republican Conference in the U.S. House of the Representatives. He currently is the Majority Leader of the U.S. House.

[114] Henry Hyde, at the time of this letter, was a member of the House Committee on the Judiciary. He currently is the Chairman of that committee.

[115] Jack Brooks, at the time of this letter, was Chairman of the House Committee on the Judiciary. He currently is retired from the U.S. House.

[116] Bernard W. Nussbaum, at the time of this letter, was the White House Counsel.

[117] Frank Wolf, at the time of this letter, was the Ranking Minority Member of the House Appropriation's Subcommittee on Treasury, Postal Service, and General Government.

[118] Janet Reno is the Attorney General of the United States.

[119] Joel Kline is the Deputy Counsel to the President.

[120] Kevin Sabo is the General Counsel of the House Committee on Government Reform and Oversight.

[121] Philip Lader, at the time of this letter, was the White House Deputy Chief of Staff.

[122] Steven Riewerts was the interim director of the White House Travel Office after the May 1993 firings.

[123] Tichenor and Associates is a management accounting firm which was hired to audit the White House Travel Office for calendar year 1994.

[124] Abner J. Mikva, at the time of the letter, was the White House Counsel. He currently is retired from the U.S. Government.

[125] Phil Larsen, at the time of the letter, was the Chief Investigator of the House Committee on Government Reform and Oversight. He currently is retired from the U.S. Government.

[126] Jonathan R. Yarowsky is an Associate Counsel at the White House.

[127] Barbara Comstock is an Investigative Counsel with the House Committee on Government Reform and Oversight.

[128] Natalie R. Williams, at the time of the letter, was an Associated Counsel at the White House.

[129] Jane C. Sherburne is a Special Counsel at the White House.
[130] Barbara K. Bracher is the Chief Investigative Counsel with the House Committee on Government Reform and Oversight.
[131] Terry Good is the Director of the White House Office of Records Management.
[132] John M. Quinn is the White House Counsel.
[133] Christopher D. Cerf is an Associate Counsel at the White House.
[134] David E. Kendall is a private attorney representing the President and First Lady.

COMPLIANCE WITH RULE XI

(1) Pursuant to clauses 2(l)(2) (A) and (B) of rule XI, a majority of the Committee having been present, the resolution recommended in this report was approved by a vote of 27 ayes to 19 nays.

(2) Pursuant to rule XI, clause 2(l)(3)(A) and rule X, clause 2(b)(1), the findings and recommendations of the Committee are found in the Facts, Background, and Findings section of this report.

(3) Pursuant to rule XI, clause 2(l)(3)(B) and section 308(a)(l) of the Congressional Budget Act of 1974, the Committee finds that no new budget authority, new spending authority, new credit authority or an increase or decrease in revenues or tax expenditures result from enactment of this resolution.

(4) Pursuant to rule XI, clause 2(l)(3)(C) and section 403(a) of the Congressional Budget Act of 1974, the Committee finds that a statement of the Congressional Budget Office cost estimate is not required as this resolution is not of a public character.

(5) Pursuant to rule XI, clause 2(l)(4), the Committee finds that a statement of inflationary impact is not required as this resolution is not of a public character.

CONCLUSION

The Committee properly proceeded with its bipartisan investigation of the allegations regarding the terminations of White House Travel Office workers. Upon due deliberation, it received the advice of the Chairman of the Committee that the cooperation of the individuals named in the resolution was not forthcoming. In essence, the individuals are seeking to set the priorities and schedule of the Committee's investigation into the Travel Office matter. The Congress cannot accept that arrangement as a constraint on its investigatory authority.

Accordingly, the Committee recommends to the House the following resolution:

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of John M. Quinn to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of David Watkins to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government

Reform and Oversight, detailing the refusal of Matthew Moore to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

ADDITIONAL VIEWS OF HON. WILLIAM F. CLINGER, JR.

A. Character of the Presidency

It is troubling that the President of the United States persists in his efforts to cover-up a scandal having no connection with any national security or vital domestic policy issue. In the final analysis, the Travel Office matter reflects the character of the President and his presidency.

We are by no means rushing matters here. For example, when Congress subpoenaed Secretary of State Henry Kissinger for documents pertaining to national security, a House committee met two days after the return date of the subpoena and voted Mr. Kissinger in contempt of Congress despite an assertion of executive privilege. By contrast, we have provided months and months for production, and the White House Counsel's Office previously committed to timely claims of executive privilege so that just such a confrontation as this would not occur. Clearly, the White House's word on this was hollow.

Frankly, the President's last minute and ineffective claim of executive privilege is an unprecedented development. I am disappointed that the President, who three years ago pledged to get to the bottom of the Travel Office matter and cooperate instead has taken the extraordinary position of attempting to assert a blanket, undifferentiated executive privilege over all outstanding Travel Office documents. Such a blanket executive privilege was rejected in *U.S.* v. *Nixon.* But in the Nixon case, the White House had at least identified the documents they were withholding. This President once promised the most open Administration in the history of the nation; yet now doesn't even meet the woefully low standard of President Nixon in identifying withheld documents.

This is the first executive privilege claim attempted by President Clinton. The rules governing executive privilege have not been updated since they were issued by President Ronald Reagan in 1982 but White House Counsel John M. Quinn informed me that the Clinton Administration would follow the Reagan procedures. Quoting from this order:

> "Executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of this privilege is necessary." "Congressional requests for information shall be complied with as promptly and as fully as possible, unless it is determined that compliance raises a substantial question of executive privilege."
>
> "A 'substantial question of executive privilege' exists if disclosure of the information requested might *significantly impair the national security* (including the conduct of foreign relations), the *deliberative process of the executive*

> *branch,* or other aspects of the performance of the executive branch's constitutional duties." (emphasis added)

It has been White House policy since the Kennedy Administration not to invoke executive privilege when allegations of wrongdoing are at issue. Certainly, that is the case with the Travel Office matter. Already, there has been a criminal referral from the General Accounting Office (GAO) involving Mr. David Watkins' statements regarding the Travel Office firings. Independent Counsel Kenneth Starr's jurisdiction has been expanded to encompass this and other Travelgate issues.

In light of the expansion of the independent counsel's jurisdiction, the President's actions are particularly troubling. I would note, for example, that President Reagan waived all claims of executive privilege during the Iran-Contra investigation.

I find it difficult to understand how documents related to the White House Travel Office scandal somehow rise to a "substantial question of executive privilege." Certainly, disclosure of these documents would not impair the national security or the conduct of foreign relations. Nor would the performance of the executive branch's constitutional duties be impaired if President Clinton kept his own pledge to get to the bottom of this matter.

B. A culture of secrecy

The Committee's receipt of an ineffective blanket claim of executive privilege the morning of the Committee vote was typical of the Administration's pattern of response from the start—delay and delay until threatened with criminal contempt for refusing to comply with proper procedure, then try to buy more time with hollow promises of future cooperation. We have heard a great deal about the 40,000 pages of documents as proof of White House cooperation. But the quantity of documents does not determine the thoroughness of production. President Clinton continues to withhold an unidentified body of subpoenaed records. Many of the records emanate from the Counsel's office.

In the wake of the uproar over the Travel Office firings, the President promised to "get to the bottom" of what happened in the firing of the Travel Office employees. He also committed to Congress that he would fully cooperate with Justice Department investigations into this matter. No issue of executive privilege was raised. No talk of internal deliberative process or withholding documents was ever mentioned by the President at that time.

In the past, I have participated with my colleagues in subpoenaing documents from White House officials. In my experience, I never before have met with such intransigence from any previous administration. Had a Republican administration behaved in this manner, I by no means would have endorsed such disdain for Congress.

The Administration's resistance to oversight in this matter began almost immediately after the firings and demonstrates the culture of secrecy that has become its hallmark. In notes dated May 27, 1993, White House Management Review author Todd Stern wrote,

> Problem is that if we do any kind of report and fail to address those questions, the press jumps on you wanting

> to know answers; while if you give answers that aren't fully honest (e.g., nothing re: HRC), you risk hugely compounding the problem by getting caught in half-truths. *You run the risk of turning this into a cover-up.* (emphasis added)

This White House embarked on an unmistakable course which frustrated, delayed, and derailed investigators from the White House itself, the GAO, the Federal Bureau of Investigation, and the administration's own Justice Department Office of Professional Responsibility and Public Integrity Sections. That is what has brought the Committee to this unfortunate impasse.

This White House simply refuses to provide this Committee with the subpoenaed documents that will help us bring this Travel Office investigation to a close, something that I have sought to do for nearly three years. Documents inexplicably have been misplaced in "stacks," or "book rooms" or storage boxes, where they languished for months if not years, despite subpoenas and document requests from numerous official investigative bodies.

If President Clinton responds to investigations of presumably minor internal problems this way, how does he handle far more serious national and international matters? This administration's culture of secrecy could have disastrous consequences where critical national policy matters involving foreign affairs are concerned. Let there be no misunderstanding. What we have before the Committee should not be the issue of a constitutional confrontation. This Committee seeks no records pertaining to the national security. This is not Bosnia. This is not Iran. International relations are not at stake.

When the White House, as in the case here, fails to comply fully with investigations mandated by Congress or senior Justice Department officials, the oversight role critical to our system of checks and balances is compromised and it is incumbent upon this Committee to assert and to uphold its jurisdiction and congressional prerogatives.

C. Deliberate attempt to obstruct legitimate oversight

Almost three years ago, I requested information and hearings into the Travel Office matter. I repeatedly was stymied in my efforts until Republicans gained a majority in the House. Prior to the change in House leadership, the White House refused to provide access to any documents. For the past three years, the White House has made every effort to deliberately, and continuously, obstruct legitimate oversight by both the executive branch and the Congress.

In a particularly cynical memo, White House Associate Counsel Neil Eggleston wrote his superiors advising that the White House should deny Republicans access to GAO Travel Office documents until after the White House appropriations bill was enacted. This exhibits the gamesmanship which has epitomized this Administration and its counsel's office. Now, even subpoenas are not treated seriously.

As I have mentioned, we already have had a criminal referral regarding David Watkins" statements about the Travel Office. This came about after a long-withheld "soul cleansing memo" by Mr.

Watkins which surfaced years after it should have been produced to numerous investigative bodies in response to document requests and subpoenas. Not a single previous investigation had access to that document. While several people in the White House knew about this memo, it never was turned over to the GAO, OPR, Public Integrity, or this Committee, frankly, for years.

It was the "surprise" finding of one version of that two-and-a-half year old "soul cleansing" memo that caused this Committee to move to bipartisan subpoenas for the production of documents. The subpoenas to the White House were issued on a bipartisan basis with input from the minority staff. Subpoenas to the White House and to individuals in turn produced other documents that previously had been overlooked.

I am convinced that the White House also is running the clock into the political season precisely so that it may cry foul, claiming that this whole investigation is an election year ploy.

Ask the White House: Was it an election year ploy in 1993 when the President signed a law mandating a GAO review of the Travel Office? Was it an election year ploy when his own deputy attorney general ordered a Justice Department Office of Professional Responsibility study in 1993? Was it an election year ploy when the Justice Department began an investigation of the President's longtime Hollywood pal, Harry Thomason?

My initial target date to complete this investigation was the summer of 1993. I myself first requested answers on this subject three years ago. And, when I became chairman of this Committee, I made every effort to complete this investigation last fall.

D. Civil contempt as a remedy

I will close by addressing the recommendation of the President's Counsel that Congress resolve this document dispute by enacting a civil remedy statute and proceeding in civil court. Frankly, I am astonished at hearing this recommendation by a Democrat President when the contemnor is a Democrat after knowing that the concept of a civil remedy has been so resoundingly rejected by previous Democrat Congress" when the contemnor was a Republican.

Former House of Representative Counsel Stanley Brand noted during the contempt of Congress dispute with the Reagan Administration Environmental Protection Agency Administrator Anne Burford:

> "It was the first time in this controversy that we heard that the [criminal contempt] statute was somehow an unseemly use of the judicial process. I would also agree that a civil sanction is too easily invoked. As a lawyer involved in civil litigation, if you allow me to set foot into Federal district court to litigate a claim of privilege, I can guarantee you I will be there for at least three years * * * Committees will have a lot of litigation, a lot of lawyers, a lot of travel around to the various district courts in the United States, but will have no papers, and it will have no basis upon which to make the judgments it has to make. It will be, quite frankly, a lawyer's field day and I don't think

> that is in the interest of the Congress or in the interest of the citizenry." [135]

The civil contempt statute resolution was also soundly criticized by my colleague, Congressman Barney Frank, who sits on the House Judiciary Committee. Rep. Frank stated,

> "I am afraid that the procedure * * * would make it too easy. The threshold for going to court, I think under that, is too low, and I think we would be in court much too often * * * The criminal sanction is the way to force the issue and I would assume in any case where a judge found against the official, that the result would be not the imprisonment of that official, but the production of the papers. It is difficult for me to think that any executive branch official sworn to uphold the laws, as we all are, would defy a court order and withhold papers that he or she was ordered to bring to us." [136]

E. Conclusion

Clearly, citing contempt is a serious action. I am saddened that it is necessary to take that step. The Congress must invoke contempt, however, when a White House repeatedly exhibits such disdain for civil and criminal investigations as this one has throughout all of the Travelgate inquiries. I certainly have anticipated the complaints my colleagues have raised. But I must note that, in the past, when the House's rights to information and the public's right to know have been so baldly denied, the constitutional responsibilities and institutional interests of this body have been recognized on a bipartisan basis.

Long after all the other investigations gave up on finding the truth this Committee continues to hold the President and his administration to his word, to the pledges and commitments of full cooperation which he made to the nation and to Congress three years ago. It remains my hope that President Clinton will recognize that the unfortunate course that he has chosen creates a constitutional confrontation and may lead to the criminal prosecution of one of his trusted aides. A true statesman would take immediate steps to end a dispute over records which have no impact on national security and no impact on public-policy making. I have a constitutional duty to perform effective oversight. The President has a constitutional duty to cooperate.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, 104th CONGRESS, ROLLCALL

[Offered by: Mr. Burton. Motion to move the previous question on the amendment]

Name	Aye	Name	Nay
Mr. Clinger	X	Mrs. Collins—IL	X
Mr. Gilman	.....	Mr. Waxman	X
Mr. Burton	X	Mr. Lantos	X
Mr. Hastert	X	Mr. Wise	.....

[135] "Prosecution of Contempt of Congress," Hearings before the Subcommittee on Administrative Law and Government Relations of the House Committee on the Judiciary, 98th Congress, 2d Sess., (Nov. 15, 1983), page 24.

[136] Id. at 19.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, 104th CONGRESS, ROLLCALL—Continued

[Offered by: Mr. Burton. Motion to move the previous question on the amendment]

Name	Aye	Name	Nay
Mrs. Morella	.....	Mr. Owens	.....
Mr. Shays	X	Mr. Towns	X
Mr. Schiff	X	Mr. Spratt	.....
Ms. Ros-Lehtinen	X	Mrs. Slaughter	X
Mr. Zeliff	X	Mr. Kanjorski	X
Mr. McHugh	X	Mr. Condit	X
Mr. Horn	X	Mr. Peterson	.....
Mr. Mica	X	Mr. Sanders	.....
Mr. Blute	X	Mrs. Thurman	X
Mr. Davis	X	Mrs. Maloney	X
Mr. McIntosh	X	Mr. Barrett	X
Mr. Fox	X	Ms. Collins—MI	X
Mr. Tate	X	Ms. Norton	.....
Mr. Chrysler	X	Mr. Moran	.....
Mr. Gutknecht	X	Mr. Green	X
Mr. Souder	X	Mrs. Meek	.....
Mr. Martini	X	Mr. Fattah	X
Mr. Scarborough	X	Mr. Brewster	.....
Mr. Shadegg	X	Mr. Holden	X
Mr. Flanagan	X	Mr. Cummings	X
Mr. Bass	X		
Mr. LaTourette	X		
Mr. Sanford	X		
Mr. Ehrlich	X		

Total: 26 Ayes, 15 Nays.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, 104th CONGRESS, ROLLCALL

[Offered by Mr. Waxman. Amendment No. 1, amendment in the Nature of a Substitute]

Name	Aye	Name	Nay
Mr. Clinger	X	Mrs. Collins—IL	X
Mr. Gilman	.....	Mr. Waxman	X
Mr. Burton	X	Mr. Lantos	X
Mr. Hastert	X	Mr. Wise	.....
Mrs. Morella	.....	Mr. Owens	.....
Mr. Shays	X	Mr. Towns	X
Mr. Schiff	X	Mr. Spratt	.....
Ms. Ros-Lehtinen	X	Mrs. Slaughter	X
Mr. Zeliff	X	Mr. Kanjorski	X
Mr. McHugh	X	Mr. Condit	X
Mr. Horn	X	Mr. Peterson	.....
Mr. Mica	X	Mr. Sanders	.....
Mr. Blute	X	Mrs. Thurman	X
Mr. Davis	X	Mrs. Maloney	X
Mr. McIntosh	X	Mr. Barrett	X
Mr. Fox	X	Ms. Collins—MI	X
Mr. Tate	X	Ms. Norton	.....
Mr. Chrysler	X	Mr. Moran	.....
Mr. Gutknecht	X	Mr. Green	X
Mr. Souder	X	Mrs. Meek	.....
Mr. Martini	X	Mr. Fattah	X
Mr. Scarborough	X	Mr. Brewster	.....
Mr. Shadegg	X	Mr. Holden	X
Mr. Flanagan	X	Mr. Cummings	X
Mr. Bass	X		
Mr. LaTourette	X		
Mr. Sanford	X		
Mr. Ehrlich	X		

Total: 16 Ayes, 26 Nays.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H. RES. —,
OFFERED BY ————

Whereas, the Committee has held no hearing on the dispute relating to the production of these records or on the production of records by John M. Quinn, David Watkins and Matthew Moore; be it

Resolved, That the Speaker not certify any report pursuant to 2 U.S.C. 192 and 194 detailing the refusal of John M. Quinn, David Watkins, or Matthew Moore to produce papers to the Committee until such time as the Committee holds a public hearing on the production of records by John M. Quinn, David Watkins, and Matthew Moore.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, 104th CONGRESS, ROLLCALL

[Offered by: Mr. Burton. Motion to move the previous question]

Name	Aye	Name	Nay
Mr. Clinger	X	Mrs. Collins—IL	X
Mr. Gilman	.....	Mr. Waxman	X
Mr. Burton	X	Mr. Lantos	X
Mr. Hastert	X	Mr. Wise	.....
Mrs. Morella	.....	Mr. Owens	.....
Mr. Shays	X	Mr. Towns	X
Mr. Schiff	X	Mr. Spratt	X
Ms. Ros-Lehtinen	X	Mrs. Slaughter	X
Mr. Zeliff	X	Mr. Kanjorski	X
Mr. McHugh	X	Mr. Condit	X
Mr. Horn	X	Mr. Peterson	.....
Mr. Mica	X	Mr. Sanders	.....
Mr. Blute	X	Mrs. Thurman	X
Mr. Davis	X	Mrs. Maloney	X
Mr. McIntosh	X	Mr. Barrett	X
Mr. Fox	X	Ms. Collins—MI	X
Mr. Tate	X	Ms. Norton	.....
Mr. Chrylser	X	Mr. Moran	.....
Mr. Gutknecht	X	Mr. Green	X
Mr. Souder	X	Mrs. Meek	.....
Mr. Martini	.....	Mr. Fattah	X
Mr. Scarborough	.....	Mr. Brewster	.....
Mr. Shadegg	X	Mr. Holden	X
Mr. Flanagan	X	Mr. Cummings	X
Mr. Bass	X		
Mr. LaTourette	X		
Mr. Sanford	X		
Mr. Ehrlich	X		

Total: 26 Ayes, 18 Nays.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H. RES. ———, OFFERED BY COLLINS (IL)

Whereas, the dispute in question before the Committee on Government Reform and Oversight ("the Committee") involves the production of three categories of records as described in White House Counsel John M. Quinn's May 3, 1996, letter to Chairman Clinger, namely

(a) Documents relating to ongoing grand jury investigations by the Independent Counsel;

(b) Documents created in connection with Congressional hearings concerning the Travel Office matter; and

(c) Certain specific confidential internal White House Counsel office documents including "vetting" notes, staff meeting notes, certain other counsel notes, memoranda which contain pure legal analysis, and personnel records which are of the type that are protected by the Privacy Act; be it

Resolved, That the Speaker not certify any report pursuant to 2 U.S.C. 192 and 194 detailing the refusal of John M. Quinn, David Watkins, or Matthew Moore to produce papers to the Committee until such time as the Committee

(1) makes available for public inspection the following records:

(a) All records of communications related to the White House Travel Office matter, including all letters, memoranda, notes of meetings, phone logs, e-mails, computer entries, video or audio tapes, calendars, press releases, diaries, telephone message slips, notes, talking points, journal entries, opinions, analyses, summaries, and disks between Members or staff of the Committee and the Independent Counsel or staff of the Independent Counsel (both Mr. Fiske and Mr. Starr) from May 19, 1993 until the present;

(b) All records of communications related to the preparation for hearings by the Committee on the White House Travel Office matter, including all letters, memoranda, notes of meetings, phone logs, e-mails, computer entries, video or audio tapes, calendars, press releases, diaries, telephone message slips, notes, talking points, journal entries, opinions, analyses, summaries, and disks between staff of the Committee including Barbara Bracher and Barbara Comstock and the Chairman of the Committee, Members of the Committee, other staff of the Committee, Members or staff of the House leadership including Virginia Thomas, or any other individual assisting the Committee in the White House Travel Office matter, or any other individual including Steven Tabackman, Billy Ray Dale, any employee of the Department of Justice, the FBI, or the Independent Counsel from May 19, 1993 to the present; and

(c) All records of communications related to the White House Travel Office matter, including all letters, memoranda, notes of meetings, phone logs, e-mails, computer entries, video or audio tapes, calendars, press releases, diaries, telephone message slips, notes, talking points, journal

entries, opinions, analyses, summaries, and disks of Members or staff of the Committee reflecting internal deliberations of the Committee including staff notes, staff meeting notices, and other notes of the Committee or its staff, and personnel records from May 19, 1993 to the present.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, 104TH CONGRESS, ROLLCALL

[Offered by: Mr. Clinger. Final passage of House Resolution, proceedings against John M. Quinn, David Watkins, and Matthew Moore, pursuant to title 2, U.S. Code, Secs. 192 and 194]

Name	Aye	Name	Nay
Mr. Clinger	X	Mrs. Collins—IL	X
Mr. Gilman	X	Mr. Waxman	X
Mr. Burton	X	Mr. Lantos	X
Mr. Hastert	X	Mr. Wise	X
Mrs. Morella	X	Mr. Owens	X
Mr. Shays	X	Mr. Towns	X
Mr. Schiff	X	Mr. Spratt	X
Ms. Ros-Lehtinen	X	Ms. Slaughter	.....
Mr. Zeliff	X	Mr. Kanjorski	X
Mr. McHugh	X	Mr. Condit	X
Mr. Horn	X	Mr. Peterson	.....
Mr. Mica	X	Mr. Sanders	X
Mr. Blute	X	Mrs. Thurman	X
Mr. Davis	X	Mrs. Maloney	X
Mr. McIntosh	X	Mr. Barrett	X
Mr. Fox	X	Miss Collins—MI	X
Mr. Tate	X	Ms. Norton	X
Mr. Chrysler	X	Mr. Moran	.....
Mr. Gutknecht	X	Mr. Green	X
Mr. Souder	X	Mrs. Meek	.....
Mr. Martini	X	Mr. Fattah	X
Mr. Scarborough	.....	Mr. Brewster	.....
Mr. Shadegg	X	Mr. Holden	X
Mr. Flanagan	X	Mr. Cummings	X
Mr. Bass	X		
Mr. LaTourette	X		
Mr. Sanford	X		
Mr. Ehrlich	X		

Totals: 27 Ayes, 19 Nays.

H. RES. —

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of John M. Quinn to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of David Watkins to produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Government Reform and Oversight, detailing the refusal of Matthew Moore to

produce papers to the Committee on Government Reform and Oversight, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

APPENDIX 1

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, May 8, 1996.

To: Hon. Bill Clinger, Chairman, House Committee on Government Reform and Oversight.
From: American Law Division.
Subject: Constitutional necessity for appearance before a committee of a custodian of subpoenaed documents prior to a vote to hold the custodian in contempt of Congress.

On January 11, 1996, your Committee issued and served subpoenas duces tecum on the White House for 30 categories of documents relating to the White House Travel Office matter, returnable by January 22. Attempts at resolution of the matter have continued since that time through correspondence, meetings and telephone communications between you and members of your Staff and White House officials, in particular John Quinn, the White House Counsel, who is official with custody and control of the pertinent documents.

On May 2, you advised Mr. Quinn that the response to the subpoenas had been unsatisfactory. You noted that a body of records was being withheld, apparently "on separation of powers or Executive Privilege" grounds, but that no privilege log had been produced specifying the particular records being withheld and particular privilege being asserted. You concluded with a notification that all documents responsive to the Committee's subpoenas were to be turned over by close of business May 8, and that for any documents not produced the President must personally make a written claim of executive privilege. Finally, you advised Mr. Quinn that you had scheduled a Committee meeting for the morning of May 9 at which time you would request a vote to hold him in contempt if the documents are not supplied.

Mr. Quinn replied by letter on May 3, acknowledging that he understood that your letter "threaten[ed] to hold me in contempt for failing to produce certain materials which essentially reflect the internal deliberations of the White House Counsel's Office." He pointed to his Office's attempt at compliance as reflected in the production of 40,000 pages of documents over the period but noted that compliance was complicated by two shifts in the original purpose of the Committee's inquiry, which was to "investigate what actually happened in the Travel Office matter." The first shift was "to investigate the numerous investigations that were conducted of the underlying conduct," and then "to investigate how we respond to your investigation of the investigations." The White House Counsel then specifically defined the three categories of documents being withheld:

1. Documents relating to ongoing grand jury investigations by the Independent Counsel;

2. Documents created in connection with Congressional hearings concerning the Travel Office matter; and

3. Certain specific confidential internal White House Counsel office documents including "vetting" notes, staff meeting notes, certain other counsel notes, memoranda which contain pure legal analysis, and personnel records which are of the type that are protected by the Privacy Act.

The letter concluded that the materials sought "go far beyond events relating to the Travel Office matter" and "presumes to ask for * * * our internal preparation for Congressional hearings * * *, our private communication with Members and staff of this Committee, as well as our response to the Office of Independent Counsel."

You responded to Mr. Quinn's letter on May 6, informing him that your May 2 letter was intended to reject all previous White House offers of compromise. You also explained that the expansion of the Committee's investigation was the result of revelations that raised questions whether certain "actions met the standards for improper or even criminal conduct." You noted that his description of the categories of documents withheld was appreciated but that a "detailed privilege log is still requested and would have been more useful." You reiterated your demand that all subpoenaed documents be produced by May 8.

In a letter of response dated May 6, Mr. Quinn asked for a further opportunity to accommodate the Committee's needs and "the President's interest in protecting confidential communications." He offered to discuss making available material related to FBI and IRS inquiries.

You replied on May 7 that you would accept the preferred documents but that their acceptance would not waive full compliance with the January 11 subpoenas. You stated that you would not "accept the proposition that non-executive privileged attorney-client relationships or internal deliberative process privileges exist", but invited a written statement "of any valid executive privilege claims" "or a written claim of Executive Privilege signed by the President," to be transmitted to the Committee by 8:00 a.m., May 9. You did not invite Mr. Quinn to testify at that Committee meeting nor has he yet asked to be present.

You have inquired whether, on the basis of the proceedings thus far, there is a constitutional necessity for the Committee to have Mr. Quinn present at the contempt meeting to specifically refuse to comply and to have an opportunity to explain his noncompliance in order to make the proposed contempt citation legally sufficient. You also ask whether all other steps legally necessary to support a criminal proceeding under 2 U.S.C. 192 and 194 have been met. We conclude that it appears that Mr. Quinn's presence is not necessary and that your Committee will have met the prima facie requirements for sustaining a contempt.

DISCUSSION

The offense of criminal contempt of Congress under 2 U.S.C. 192, 194, is established by meeting four principal elements: (1) jurisdiction and authority; (2) legislative purpose; (3) pertinency; (4) will-

fulness. See, John C. Grabow Congressional Investigations: Law and Practice, Ch. 3.4(b) (1988).

1. Jurisdiction and Authority.—The jurisdiction of the Government Reform and Oversight Committee is broadly defined in House Rule X, 1(g) and includes oversight of the "overall economy, efficiency and management of government operations and activities, including Federal procurement," Rule X 1, (g)(6), and the Committee has the authority to issue subpoenas for testimony and documents pursuant to House Rule XI, 2(m)(2). In this case, the activities of the Travel Office would seem to fall well within the Committee's jurisdiction and subpoenas for documents were issued and served in accordance with House and Committee rules on the appropriate custodians of the documents. Custody and control has been acknowledged by word and action.

In his May 3 letter Mr. Quinn appears to raise an objection to the fact that as your Committee's investigation progressed, its scope increased. However, the courts have not limited congressional inquiry to its initial stated scope. In *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 391, 509 (1975), the Supreme Court recognized that a congressional investigation may lead "up some 'blind alleys' and into non productive enterprises. To be a valid investigative inquiry there need to be no predictable end result." More recently, in *Senate Select Committee on Ethics* v. *Packwood,* 845 F.Supp. 17, 20–21 (D. D.C. 1994), stay pending appeal denied, 114 S.Ct. 1036 (1994), the court rejected a claim of overbreath with regard to a subpoena for a Senator's personal diaries, holding that the Committee's investigation was not limited in its investigatory scope to its original demand "even though the diaries might prove compromising in respects to the Committee has not yet foreseen."

2. Legislative Purpose.—The Supreme Court has made it clear that Congress does not have to state explicitly what it intends to do as a result of an investigation. In *In re Chapman,* 166 U.S. 661, 669 (1897), the Court upheld the validity of a resolution authorizing an inquiry into charges of corruption against certain Senators despite the fact that it was silent as to what might be done when the investigation was completed.

In *McGrain* v. *Daugherty,* 273 U.S. 135 (1927), the original resolution that authorized the Senate investigation made no mention of a legislative purpose. A subsequent resolution for the attachment of a contumacious witness declared that his testimony was sought for the purpose of obtaining "information necessary as a basis for such legislative and other action as the Senate may deem necessary and proper." The Court found that the investigation was ordered for a legitimate object. It wrote:

> The only legitimate object the Senate could have in ordering the investigation was to aid in legislating; and we think the subject matter was such that the presumption should be indulged that this was the real object. An express avowal of the object would have been better; but in view of the particular subject-matter was not indispensable * * *.
>
> The second resolution—the one directing witness be attached—declares that this testimony is sought with the purpose of obtaining "information necessary as a basis for

> such legislative and other action as the Senate may deem necessary and proper." This avowal of contemplated legislation is in accord with what we think is the right interpretation of the earlier resolution directing the investigation. The suggested possibility of "other action" if deemed "necessary or proper" is of course open to criticism in that there is no other action in the matter which would be within the power of the Senate. But we do not assent to the view that this indefinite and untenable suggestion invalidates the entire proceeding. The right view in our opinion is that it takes nothing from the lawful object avowed in the same resolution and rightly inferable from the earlier one. It is not as if an admissible or unlawful object were affirmatively and definitely avowed.

Moreover, when the purpose asserted is supported by reference to specific problems which in the past have been, or in the future may be, the subject of appropriate legislation, it has been held that a court cannot say that a committee of the Congress exceeds its power when it seeks information in such areas. *Sheoton* v. *United States,* 404 F.2d 1292, 1297 (D.C. Cir. 1968), cert. denied, 393 U.S. 1024 (1969). In the past, the types of legislative activity which have justified the exercise of the power to investigate have included: the primary functions of legislating and appropriating, *Barenblatt* v. *United States,* 360 U.S. 109 (1959); the function of deciding whether or not legislation is appropriate, *Quinn* v. *United States,* 349 U.S. 155, 161 (1955); oversight of the administration of the laws by the executive branch, *McGrain* v. *Daugherty,* supra, 279 U.S. at 295; and the essential congressional function of information itself in matters of national concern, *United States* v. *Rumely,* 345 U.S. 41, 43, 45 (1953); *Watkins* v. *United States,* supra, 354 U.S. at 200 n.3.

3. Pertinency.—In determining general questions of the pertinency of inquiries to the subject matter under investigation, the courts have required only that the specific inquiries be reasonably related to the subject matter area under investigation, *Sinclair* v. *United States,* supra, 279 U.S. at 299; *Ashland Oil, Inc.* v. *F.T.C.,* 409 F.Supp. at 305. An argument that pertinence must be shown "with the degree of explicitness and clarity required by the Due Process Clause" has been held to confuse the standard applicable in those rare cases when the constitutional rights of individuals are implicated by congressional investigations with the far more common situation of the exercise of legislative oversight over the administration of the law which does not involve an individual constitutional right or prerogative. It is, of course, well established that the court will intervene to protect constitutional rights from infringement by Congress, including its committees and members. See, e.g., *Yellin* v. *United States,* 374 U.S. 1089, 143, 144 (1969); *Watkins* v. *United States,* supra; *United States* v. *Ballin,* 144 U.S. 1, 5 (1892). But "[w]here constitutional rights are not violated, there is no warrant to interfere with the internal procedures of Congress." *Exxon Corporation* v. *F.T.C.,* 589 F.2d 582, 590 (D.C. Cir. 1978).

4. Willfullness.—Section 192 refers to witnesses who "willfully make default." The courts have long established that willfullness

as used in the statute does not require the showing of a specific criminal intent, bad faith or moral turpitude. *Braden* v. *United States,* 365 U.S. 431, 437 (1961), *Barsky* v. *United States,* 167 F.2d 241, 251 (D.C. Cir. 1948). It deals only with intentional conduct. *United States* v. *Bryan*, 339 U.S. 323 (1950). The requirement is satisfied if "the refusal was deliberate and intentional and was not a mere inadvertence or an accident." *Field* v. *United States.* 167 F.2d 97, 100 (D.C. Cir. 1947), cert denied, 332 U.S. 851 (1948). With particular respect to failures to produce documents called for by a subpoena duces, tecum, default occurs upon the return date of the subpoena. *United States* v. *Bryan,* supra, 339 U.S. at 330. The correspondence reviewed above provides a substantial basis for finding that the withholding of the subpoenaed documents by Mr. Quinn in intentional.

Finally, with respect to the legal necessity to allow Mr. Quinn the opportunity to make an in person appearance before the Committee in order to make his refusal and given an explanation, we find no authority that establishes a due process right to such an appearance. Indeed, there is a case law to the contrary. In *Groppi* v. *Leslie*, 404 U.S. 496 (1972), the Court noted that it decisions recognizing the "the power of the Houses of Congress to prevent contemptuous conduct leave little question that the Constitution imposes no general barriers to the legislative exercise of such power. 404 U.S. at 499. They acknowledged that some process is due but the nature of that process would be decided on a case-by-case basis. The Court admonished that "[c]ourts must be sensitive to the nature of a legislative contempt proceeding and 'possible burden on that proceeding' that a given procedure might entail." Id at 500. The Court stated that "the panoply of procedural rights that are accorded a defendant in a criminal trial have never been thought necessary in legislative contempt proceeding." Id. at 501. This was brought home most clearly several years earlier in *United States* v. *Bryan*, supra, a case involving a subpoena for records under Section 192. The Court rejected an argument that the statute required a refusal to take place before a quorum of a committee. The Court explained that under Section 192, there is no such requirement with respect to document production and, in fact, is not an essential element of the offense.

> Respondent attempts to equate R.S. § 102 with the perjury statute considered in the Christoffel case by contending that it applies only to the refusal to testify or produce papers before a committee—i.e., in the presence of a quorum of the committee. But the statute is not so limited. In the first place, it refers to the wilful failure by any person "to give testimony or to produce papers upon any matter under inquiry before * * * any committee of either House of Congress." not to the failure to testify before a congressional committee. And the fact that appearance before a committee is not an essential element of the offense is further emphasized by additional language in the statute, which, after defining wilful default in the terms set out above, continues, "or who, having appeared, refuses to answer any question pertinent to the question under in-

quiry, shall be deemed guilty of a misdemeanor, * * *." (Emphasis supplied.)

It is clear that R.S. § 102 is designed to punish the obstruction of inquires in which the Houses of Congress or their committees are engaged. If it is shown that such an inquiry is, in fact, obstructed by the intentional withholding of documents, it is unimportant whether the subpoenaed person proclaims his refusal to respond before the full committee, sends a telegram to the chairman, or simply stays away from the hearing on the return day. His statements or actions are merely evidence from which a jury might infer an intent to default. A proclaimed refusal to respond, as in this case, makes that intent plain. But it would hardly be less plain if the witness embarked on a voyage to Europe on the day before his scheduled appearance before the committee.

Of course a witness may always change his mind. A default does not mature until the return date of the subpoena, whatever the previous manifestations of intent to default. But when the Government introduced evidence in this case that respondent had been validly served with a lawful subpoena directing her to produce records within her custody and control, and that on the day set out in the subpoena she intentionally failed to comply, it made a prima facie case of wilful default.

339 U.S. at 329–30.

Moreover, it appears that the congressional practice with respect to appearances of senior Executive Branch officials who have received document subpoenas is not uniform. In the eight instances since 1975 in which cabinet level officials have been held in contempt by a House, a committee, or subcommittee, at least one, that of Henry Kissinger in 1975, was voted by the committee in his absence on the basis of a letter for him refusing to comply on the ground of executive privilege. See Senate Report No. 94–693, 94th Cong, 2d. Sess. (1975). Three other instances, involving Secretaries of Energy Duncan (1980) and Edwards (1981), and Attorney General William French Smith (1984), give strong indication from press reports that these individuals also did not appear. See 38 Cong. Q. 1307–08, 1352–53 (1980) (Duncan); 39 Cong. Q. 1342, 1425 (1981) (Edwards); Washington Post, Nov. 1, 1984, A–15 (Smith).

We conclude then, that subpoenas are legally sufficient and the non-appearance of Quinn at the contempt hearing, particularly in light of the invitation to file a written explanation of his refusal, and his failure (to date) to request a personal appearance, would not appear to violate procedural due process requirements.

MORTON ROSENBERG,
Specialist in American Public Law.

APPENDIX 2

SUBPENA DUCES TECUM

By Authority of the House of Representatives of the Congress of the United States of America

To Custodian of Records, Executive Office of the President

You are hereby commended to produce the things identified on the attached schedule before the full Committee on Government Reform and Oversight of the House of Representatives of the United States, of which the Hon. William F. Clinger, Jr. is chairman, by producing such things in Room 2157 of the Rayburn House Office Building, in the city of Washington, on Monday, January 22, 1996, at the hour of 5:00 p.m.

To Kevin Sabo, Barbara Bracher, Barbara Comstock, or U.S. Marshals Service to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of January, 1996.

WILLIAM F. CLINGER, Jr., *Chairman.*

Attest: Robin H. Carle, Clerk.

By: Linda G. Nave, Deputy Clerk.

DOCUMENT REQUEST TO THE WHITE HOUSE EXECUTIVE OFFICE OF THE PRESIDENT

Definitions and instructions

(1) For the purposes of this request, the word "record" or "records" shall include but shall not be limited to any and all originals and identical copies of any item whether written, typed, printed, recorded, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes but is not limited to any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, memoranda, diaries, telephone logs, telephone message slips, tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, e-mail (e-mail are limited to those specified in particular requests or that have been reduced to hard copies and are responsive to any of the outlined requests), disks, briefing materials and notes, cover sheets or routing cover sheets or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" shall also include redacted and unredacted versions of the same record.

(2) For purposes of this request, "The White House Travel Office matter" refers to all events leading to the May 19, 1993 firings of the White House Travel Office employees and includes all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1, 1993 to the present; the activities of Harry Thomason, Darnell Martens and Penny Sample at the White House; all allegations of wrongdoing concerning the Travel Office employees; actions taken by the Federal Bureau of Investigation and the Department of Jus-

tice, both prior to and after the firings (including the actions by any field office personnel and any White House involvement in coordination or attendance of interviews), including but not limited to *U.S.* v. *Billy Ray Dale;* all investigations and subsequent reviews of the Travel Office firings by any agency including, but not limited to the White House Management Review, the FBI Weldon Kennedy/I.C. Smith review, the FBI OPR review, the Justice Department OPR review, the IRS internal review, the Treasury Inspector General review, the General Accounting Office review, the proposed U.S. House of Representatives "Resolution of Inquiry" considered and voted on in the House Judiciary Committee in July 1993; and all actions relating to or describing the criminal investigations into the White House Travel Office matter including any subsequent action or activities of any kind as a result of the above mentioned events by the White House, the Treasury Department, the IRS, the General Services Administration, the General Accounting Office, the Federal Bureau of Investigation, the Independent Counsel (both Mr. Fiske and Mr. Starr) and the Department of Justice up to the date of this request unless otherwise limited.

(3) For purposes of this request, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

(4) For purposes of this request "White House" refers to any and all employees in the Executive Office of the President; employees in the Office of the First Lady; employees in the Office of the Vice-President; consultants, whether paid or not paid; volunteers; and all other employees of the executive branch assigned to, or working at the White House, regardless of designation describing their service at the White House.

(5) For purposes of this request any records requested includes all records in the physical possession of the White House, all records in the possession of any custodians (such as Mr. Kendall) of White House documents, any records maintained in the White House residence, any documents which have been placed into any manner of storage. Unless a time period is specifically identified, the request includes all documents to the present.

DOCUMENTS REQUESTED

1. Any records related to the White House Travel Office matter or the White House Project from the following individuals and/or offices (which would also include all assistants and secretaries): The White House Counsel's office, Maggie Williams, Capricia Marshall, Lisa Caputo, Neel Lattimore, Isabelle Tapia, Mary Beck, Vince Foster, Deborah Gorham, Linda Tripp, Bill Kennedy, David Watkins, Catherine Cornelius, Clarissa Cerda, Jeff Eller, Patsy Thomason, Ricki Seidman, Mark Gearan, Dwight Holton, Andre Oliver, Todd Stern, Jean Charleton, Brian Foucart, Janet Green, Beth Nolan, Clifford Sloan, Mack McLarty, Bill Burton, David Dreyer, Anne Edwards, Rahm Emanuel, David Leavey, Bruce Lindsey, Darnell Martens, Matt Moore, Dee Myers, Lloyd Cutler, Jane Sherburne, Abner Mikva, Mark Fabiani, Tom Hufford, Roy Neel, John Podesta, Rita Lewis, David Gergen, Craig Livingston,

Marjorie Tarmey, Ira Magaziner, Bernard Nussbaum, Jennifer O'Connor, Penny Sample, George Stephanopoulos, Frank Stidman, Harry Thomason, Lorraine Voles, Jeremy Gaines, Dale Helms, David Gergen, Joel Klein, Neil Eggleston, Steve Neuwirth, Cheryl Mills, Jurg Hochuli, Andris Kalnins, Matt Moore, Lorraine Voles and Bruce Overton.

2. All records related to the General Accounting Office review of the White House Travel Office.

3. All records related to the Justice Department's Office of the White House Travel Office.

4. Any records related to American Express obtaining the White House Travel Office business including all records related to any contact with GSA or American Express up to the time of this letter.

5. All records related to the Peat Marwick review of the White House Travel Office and any subsequent reviews such as that performed by Tichenor and Associates and any records reflecting any contacts, communications or meetings with any Peat Marwick attorneys or officials to the present.

6. Any records of any contacts or communications related to any IRS matter regarding UltraAir and/or any IRS matter regarding any other White House charter company, any IRS matter related to any of the fired seven travel office employees, or any other IRS matter related to the White House Travel Office and any records of contact or communications with IRS Commissioner Peggy Richardson by Mack McLarty, Webb Hubbell, Bruce Lindsey, Vince Foster, Bill Kennedy, or any member of the White House Counsel's office from May 1, 1993 to the present.

7. All records related to the Treasury Inspector General's investigation of the IRS audit of UltrAir. (The investigation requested by Rep. Frank Wolf in May 1993).

8. Any records relating to any proposal to use independent financing or unused Presidential Inaugural Committee funds to assists anyone on the White House staff, out source White House duties or tasks, or otherwise assist White House operations. This would include records regarding any efforts both inside and outside the White House to explore evaluate or implement such proposal. It would also include records of any subsequent analysis of such efforts.

9. Any records relating to or mentioning the finding of the note in Mr. Foster's briefcase or any other location following his death, any Travel Office records of Mr. Foster's and any records relating to the finding of or existence of or explanations of any files of Mr. Foster's relating to the White House Travel Office matter, Special Government Employees, issues of nepotism, the use of volunteers or any efforts to obtain Office of Legal Counsel opinions on any of these matters and any records of any contacts with Mr. James Hamilton, Lisa Foster, Harry Thomason, Susan Thomases, James Lyons about Vincent Foster's records.

10. Any records relating to Mr. Thomason, Mr. Martens, Ms. Penny Sample, Ms. Betta Carney and Mr. Steve Davison and any other World Wide Travel employees including, but not limited to, all records indicating what these individuals did while at the White House, any documents relating to issues arising out of any actions they took while at the White House, any personnel records, re-

quests for passes or pass forms, requests for office space and any forms related to office space, phones or other equipment,and any records relating to any actions taken by these individuals regarding the White House Travel Office. (For Ms. Sample, this request would also include all trip files for trips she had any involvement with while at the White House.)

11. All records about problems or allegations or wrongdoing in the Travel Office from January 20, 1993 to present.

12. All tapes or videotapes produced by Mr. Thomason or any associates of his for the White House, the Bill Clinton for President Committee or the Clinton/Gore '92 Committee and all billings and financial statements relating to such work.

13. Any tapes, tape recordings or videotapes of any kind related to the White House Travel Office, the White House Travel Office employees, or any allegations of wrongdoing by anyone in the White House Travel Office or any air charter company or other business doing business with the White House Travel Office.

14. Calendars of the following individuals: Bill Kennedy, Vince Foster, Mack McLarty, Ricki Seidman, John Podesta, Todd Stern, Dwight Holton, Andre Oliver, Brian Foucart, Bruce Lindsey, Jack Kelly, Matt Moore, Beth Nolan, Cliff Sloan, Bernard Nussbaum, David Watkins, Catherine Cornelius, Jennifer O'Connor, George Stephanopoulos, Dee Dee Myers, Clarissa Cerda, Jeff Eller, Patsy Thomasson, Mark Gearan, Leon Panetta, Harry Thomason, and Maggie Williams indicating any meetings, messages or discussions with any of these same named individuals among or between each other and among or between these names individuals and Susan Thomases, Darnell Martens, Webb Hubbell, (Harry or Linda Bloodworth-Thomason, Larry Herman (or any other KPMG partners or employees) or James Lyons between May 1 and July 31, 1993.

15. Phone records (including message slips, (phone logs, pages, or any White House records of phone calls) for the same named individuals in paragraph #14 above, making or receiving calls from any of the same named individuals between May 1 and July 31, 1993.

16. All calendars and phone records, message slips or phone logs, of the following individuals, made to or from any of the following individuals, from May 1, 1995 through November 30, 1995 regarding the White House Travel Office matter or the case of *U.S.* v. *Billy Ray Dale:* Jane Sherburne, John Yarowsky, Natalie Williams, Miriam Nemitz, Judge Mikva, Maggie Williams, Capricia Marshall, patsy Thomasson, John Podesta, Catherine Cornelius, Mark Gearan, Bruce Lindsey, David Watkins, Janet Greene, Betsey Wright, Webb Hubbell, Bill Kennedy, Jeff Eller, Neil Eggleston, Cliff Sloan, Mike Berman, Harry Thomason, Darnell Martens, Catherine Cornelius, John Podesta, Beth Nolan, James Hamilton, Susan Thomases, James Lyons, Roy Neel, John Gaughan, any employee of the Military office, Larry Herman, John Shutkin, any employee of KPMG Peat Marwick, Billy Ray Dale, Barney Brasseux, John Dreylinger, Ralph Maughan, John McSweeney, Robert VanEimeren, Gary Wright, David Bowie; Pam Bombardi, Tom Carl, Stuart Goldberg, Lee Radek, Jamie Gorelick, Adam Rossman, David Sanford.

17. All records related to Travel Office funds and/or documents being placed in the White House military office and all records of any inquiries about related events.

18. All records of any contacts with David Watkins or Bill Kennedy from the time they ended their employment at the White House to the present.

19. All Executive order documents located in Mr. Foster's Travel office files and/or his briefcases.

20. All records related to Harry Thomason and/or Darnell Martens discussing or pursuing contacts with GSA, all records related to ICAP, and any record of the White House Counsel's office analyzing the issues raised by Mr. Thomason and Mr. Martens actions at the White House.

21. All records related to any sexual harassment complaints about Mr. David Watkins during the Clinton/Gore 1992 campaign or during his tenure at the White House and any records of meetings, actions, or communications regarding such complaints and all records related to the $3,000 per month retainer provided to Mr. Watkins by the Clinton for President campaign.

22. All records of any contacts, communications or meetings regarding the "Watkins memo" produced to the Committee on January 3, 1996 and the chain of custody of this memo.

23. All indices or catalogues of Vincent Foster's office, tapes, computer and documents and who received each document from his office.

24. All records relating to the actions of Mr. Watkins at the White House regarding the use of White House helicopters, the names of all individuals in the two helicopters used in May 1994 for Mr. Watkins golf outing and all records relating to his departure from the White House.

25. All e-mail to or from the following individuals from May 7, 1993 through May 28, 1993, concerning the White House Travel Office matter as defined in paragraph (2), the White House project, or the Presidential Inaugural Commission: David Watkins, Patsy Thomasson, Jennifer O'Connor, Brian Foucart, Peter Siegel, Paul Toback, Catherine Cornelius, Clarissa Cerda, Dee Dee Myers, David Leavey, George Stephanopoulos, Mack McLarty, Ricki Seidman, Bill Burton, Bruce Lindsey, Harry Thomasson, Darnell Martens, Maggie Williams, Capricia Marshall, Lisa Caputo, Mark Gearan, Bernard Nussbaum, Isabelle Tapia, Vincent Foster, Deborah Gorham, Linda Tripp, Betsy Pond, Bill Kennedy, John Podesta, Dwight Holton, Andre Oliver, Todd Stern, Jean Charleton, Beth Nolan, Clifford Sloan, Rahm Emanuel, Lorraine Voles, and Craig Livingstone.

26. All e-mail to or from the following individuals from June 26, 1993 through August 1, 1993, concerning the White House Travel Office matter as defined in paragraph (2), the White House project, or the Presidential Inaugural Commission: Vincent Foster, Mack McLarty, David Watkins, Patsy Thomasson, John Podesta, Todd Stern, Dwight Holton, Andre Oliver, Bernard Nussbaum, Bruce Lindsey, Ricki Seidman, Mark Gearan, Maggie Williams, Lisa Caputo, George Stephanopoulos and Cliff Sloan.

27. All e-mail to or from the following individuals from September 1, 1993 through December 20, 1993, concerning the White

House Travel Office matter as defined in paragraph (2), the White House project, or the Presidential Inaugural Commission: Mack McLarty, David Watkins, Patsy Thomasson, Cliff Sloan, Neil Eggleston, Bruce Lindsey, John Podesta, Todd Stern, Ricki Seidman, Maggie Williams, Mark Gearan, and George Stephanopoulos.

28. All e-mail to or from the following individuals from May 1, 1994 through September 8, 1994, concerning the White House Travel Office matter as defined in paragraph (2), the White House project, or the Presidential Inaugural Commission: Neil Eggleston, Lloyd Cutler, Joel Klein, John Podesta, Jane Sherburne, Sheila Cheston, Maggie Williams and Todd Stern.

29. All records relating to the matter of *United States of America* v. *Billy Ray Dale,* any investigation by the Justice Department into the White House Travel Office matter as defined in paragraph (2), and all records relating to Billy Ray Dale as well as any records of talking points prepared about Mr. Dale to the present.

30. All records related to the gathering of documents for any review or investigation related to the White House Travel Office matter as defined in paragraph (2). This includes, but should not be limited to, the White House Management Review, the IRS internal review, the GAO Travel OFfice review, the OPR investigation, the Public Integrity investigation, the Treasury IG investigation, the FBI internal review, Independent Counsel Robert Fiske, and Independent Counsel Kenneth Starr.

MANNER OF PRODUCTION

Please provide a document production log for all documents produced with a description of the document, the identity of the individual who created or authored the document, identify the individual and location where each document was found, identify any handwriting of any notes or notations on any document and the author of any such notations. In addition, please indicate for each item requested if you know of any document which would be responsive and previously existed but you no longer have access to or it has been destroyed. For any documents which have been destroyed please identify the document and who destroyed it. In addition, for all documents produced to date, as well as any additional items, identify all documents which originated in Vincent Foster's office.

APPENDIX 3

SUBPENA DUCES TECUM

By Authority of the House of Representatives of the Congress of the United States of America

To David Watkins

You are hereby commanded to produce the things identified on the attached schedule before the full Committee on Government Reform and Oversight of the House of Representatives of the United States, of which the Hon. William F. Clinger, Jr. is chairman, by producing such things in Room 2154 of the Rayburn House Office Building, in the city of Washington, on Thursday, January 11, 1996 at the hour of 2:00 p.m.

To Kevin Sabo, Barbara K. Bracher, or any U.S. Marshall to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this Fifth day of January, 1996

WILLIAM F. CLINGER, Jr. *Chairman,*

Attest: Robin H. Carle, *Clerk.*

DOCUMENT REQUESTS TO DAVID WATKINS

Definitions and instructions

(1) For the purposes of this request, the word "record" or "records" shall include but shall not be limited to any and all originals and identical copies of any item whether written, typed, printed, recorded, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however, produced or reproduced, and includes but is not limited to any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, memoranda, diaries, telephone logs, telephone message slips, tapes, notes talking points,letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, e-mail disks, briefing materials and notes, cover sheets or routing cover sheets or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" shall also include redacted and unredacted versions of the same record.

(2) For purposes of this request, "The House Travel Office matter" refers to all events leading to the May 19, 1993 firings of the White House Travel Office; any and all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1, 1991 to the present; any and all records regarding any allegations of wrongdoing by Travel Office employees; all actions taken both prior to and after the firings by the Federal Bureau of Investigation (including the actions taken by any field office personnel and any White House involvement in coordinating or sitting in on interviews) and the Department of Justice; all reviews of the firings conducted by any agency including, but not limited to the White House Management Review, the FBI Weldon Kennedy/I.C.Smith review, the FBI OPR review, the Justice Department OPR review, the General Accounting Office review, the proposed U.S. House of Representatives "Resolution of Inquiry" considered and voted on in the House Judiciary Committee in July 1993, and any other documents related to these matters; and all actions relating to or describing the investigation and subsequent acts and activities of any kind by the White House, the Treasury Department, the IRS, the General Services Administration, the General Accounting Office, the Federal Bureau of Investigation, the Independent Counsel (both Mr. Fiske and Mr. Starr) and the Department of Justice up to the date of this letter.

(3) For purposes of this request, the terms "refer" or "relate" and "concerning" as to any given subject means anything that con-

stitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to the subject, including but not limited to records concerning the preparation of other records.

(4) For purposes of this request "White House" refers to any and all employees of the Executive Office of the President; the First Lady and her office; the President; the Vice-President; consultants, whether paid or not paid; volunteers; and all employees of the executive branch assigned to, or working at the White House, regardless of designation describing the service at the White House.

(5) For purposes of this request any records requested included all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the request includes all documents to the present.

DOCUMENTS REQUESTED

1. Any records related to the White House Travel Office matter from January 1991 to present.

2. All records related to the White House Project.

3. All records related to any efforts to use Presidential Inaugural Commission funds for any White House purposes or for any outside employees who would assist the White House in any manner.

4. All records related to the General Accounting Office review of the White House Travel Office.

5. All records related to the Justice Department's Office of Professional Responsibility review of the White House Travel Office or any records related to the justice Department's Office of Public Integrity investigation or the Justice Department's Independent Counsel investigation (either Mr. Fiske or Mr. Starr).

6. Any records related to American Express obtaining the White House Travel Office business including all records related to any contact with GSA or American Express up to the time of this letter relating to the original contract and subsequent renewals by the White House.

7. All records (and subsequent contacts) related to the Peat Marwick review of the White House Travel Office and any subsequent reviews such as that performed by Tichenor and Associates.

8. Any records related to any actions taken by the IRS regarding UltrAir and other White House charter company, any of the fired seven travel office employees, or any other IRS matter related to the White House Travel Office.

9. All records related to the Treasury Inspector General's investigation of the IRS audit of UltrAir completed in March 1994.

10. Any records relating to any notes or files of Vincent Foster, any Travel Office records of Mr. Foster's and any records relating to the finding of or existence of or explanations of any files of Mr. Foster's relating to the White House Travel Office matter.

11. Any records relating to Mr. Thomason, Mr. Martens, Ms. Penny Sample, Ms. Betta Carney and Mr. Steve Davison and any other World Wide Travel employees or Air Advantage employees including, but not limited to, all records indicating what these individuals did while at the White House, any documents relating to

issues arising out of any actions they took while at the White House, any personnel records, requests for passes or pass forms, requests for office space and any documents or notes related to office space, phones or other equipment, and any records relating to any actions taken by these individuals regarding the White House Travel Office.

12. All videotapes produced by Mr. Thomason or any associates of his for the White House, the Bill Clinton for President Committee or the Clinton/Gore '92 Committee and all billings and financial statements relating to such work.

13. Any documents, including draft or final Executive Orders connected with transportation, travel, GSA, procurement, contracting, the White House Travel Office operations or The White House Project or any efforts to use an outside source of funding to assist the White House staff.

14. All records related to Harry Thomason and/or Darnell Martens, all records related to ICAP, all records related to any Executive Orders connected with any changes in contracting or procuring or related to National Performance Review efforts.

15. All records related to your employment and/or any consultant work you have done with any Clinton campaign committee from 1991 to the present.

16. All records of all contacts and communications with any past or present White House personnel, campaign personnel, or Betsey Wright, Skip Rutherford, Mike Berman, Webster Hubbell, Susan Thomases, James Lyons, Harry Thomason, Darnell Martens, Markie Post, Jack Palladino or any attorney representing the President or the First Lady from June 1, 1995 to present.

17. All calendars, phone logs, message slips and phone bills from January 1991 to the present.

18. All records relating to any complaints against you for sexual harassment or inappropriate actions by any employee, volunteer or contractor for any Clinton campaign or the White House office. (For any complaints from the White House office beginning on January 20, 1993 and thereafter).

19. All records relating to your $3,000 month retainer or any other retainers or payments form the Clinton for President Committee from June 1994 to the present.

20. All records relating to your actions during your tenure at the White House regarding the use of White House helicopters and all records relating to your departure from the White House.

21. All records pertaining to the employment and/or resignation of Patsy Thomasson, Janet Greene, Jean Charleton, Brian Foucart.

MANNER OF PRODUCTION

Please provide a document production log for all documents produced. In addition, please indicate for each item requested if you know of any document which you know to have existed but you no longer have access to or it has been destroyed. For any documents which have been destroyed please identify the document and who destroyed it.

APPENDIX 4

SUBPENA DUCES TECUM

By Authority of the House of Representatives of the Congress of the United States of America.

To Matthew Moore.

You are hereby commanded to produce the things identified on the attached schedule before the full Committee on Government Reform and Oversight of the House of Representatives of the United States, of which the Hon. William F. Clinger, Jr. is chairman, by producing such things in Room 2157 of the Rayburn House Office Building, in the city of Washington, on Monday, February 26 1996, at the hour of 5:00 pm.

To Kevin Sabo, Barbara Bracher, Barbara Comstock, or U.S. Marshals Service to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 6th day of February, 1996.

WILLIAM F. CLINGER, JR. *Chairman.*

Attest: Robin H. Carle, *Clerk.*

DOCUMENT REQUESTS TO MATTHEW MOORE

Definitions and instructions

(1) For the purposes of this request, the word "record" or "records" shall include but shall not be limited to any and all originals and identical copies of any item whether written, typed, printed, recorded, transcribed, punched, taped, filmed , graphically portrayed, video or audio taped, however produced or reproduced, and includes but is not limited to any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, memoranda, diaries, telephone logs, telephone message slips, tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, e-mail, disks, briefing materials and notes, cover sheets or routing cover sheets or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" shall also include redacted and unredacted versions of the same record.

(2) For purposes of this request, "The White House Travel Office matter" refers to all events leading to the May 19, 1993 firings of the White House Travel Office employees and includes all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1, 1993 to the present; the activities of Harry Thomason, Darnell Martens and Penny Sample at the White House; all allegations of wrongdoing concerning the Travel Office employees; actions taken by the Federal Bureau of Investigation and the Department of Justice, both prior to and after the firings (including the actions by any field office personnel and any White House involvement in coordination or attendance of interviews), including but not limited to *U.S.* v. *Billy Ray Dale*; all investigations and subsequent reviews

of the Travel Office firings by any agency including, but not limited to the White House Management Review, the FBI Weldon Kennedy/I.C. Smith review, the FBI OPR review, the Justice Department OPR review, the IRS internal review, the Treasury Inspector General review, the General Accounting Office review, the proposed U.S. House of Representatives "Resolution of Inquiry" considered and voted on in the House Judiciary Committee in July 1993; and all actions relating to or describing the criminal investigations into the White House Travel Office matter including any subsequent action or activities of any kind as a result of the above mentioned events by the White House, the Treasury Department, the IRS, the General Services Administration, the General Accounting Office, the Federal Bureau of Investigation, the Independent Counsel (both Mr. Fiske and Mr. Starr) and the Department of Justice up to the date of this request unless otherwise limited.

(3) For purposes of this request, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

(4) For purposes of this request "White House" refers to any and all employees of the Executive Office of the President; the First Lady and her office; the President; the Vice-President; consultants, whether paid or not paid; volunteers; and all employees of the executive branch assigned to, or working at the White House, regardless of designation describing their service at the White House.

(5) For purposes of this request any records requested included all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the request includes all documents to the present.

DOCUMENTS REQUESTED

1. Any records related to the White House Travel Office matter from January 1993 to present.

2. All records related to the White House Project which involved both improving the "staging" of Presidential events as well as finding a way to utilize excess Presidential Inaugural Commission funds for outsourcing White House assistance or providing assistance to the White House.

3. All records related to any efforts to use Presidential Inaugural Commission funds for any White House purposes or for any outside employees who would assist the White House in any manner.

4. All records related to the General Accounting Office review of the White House Travel Office.

5. All records related to the Justice Department's Office of Professional Responsibility review of the White House Travel Office or any records related to the Justice Department's Office of Public Integrity investigation or any other Justice Department investigation.

6. Any records related to American Express obtaining the White House Travel Office business including all records related to any contact with GSA or American Express up to the time of this letter

relating to the original contract and subsequent renewals by the White House.

7. All records related to the KPMG Peat Marwick review of the White House Travel Office and any subsequent reviews such as that performed by Tichenor and Associates, including all contacts with any KPMG Peat Marwick employee.

8. Any records related to any actions taken by the IRS regarding UltrAir and any other White House charter company, any of the fired seven travel office employees, or any other IRS matter related to the White House Travel Office and any records of contacts or communications with IRS Commissioner Peggy Richardson.

9. All records related to the Treasury Inspector General's investigation of the IRS audit of UltrAir completed in March 1994.

10. Any records relating to any notes or files of Vincent Foster's office, any Travel Office records of Mr. Foster's and any records relating to the finding of or existence of or explanations of any files or notes of Mr. Foster's relating to the White House Travel Office matter.

11. Any records relating to Mr. Harry Thomason, Mr. Darnell Martens, Ms. Penny Sample, Ms. Betta Carney and Mr. Steve Davison and any other World Wide Travel employees or Air Advantage employees including, but not limited to, all records indicating what these individuals did while at the White House, any documents relating to issues arising out of any actions they took while at the White House, any personnel records, requests for passes or pass forms, requests for office space and any documents or notes related to office space, phones or other equipment, and any records relating to any actions taken by these individuals regarding the White House Travel Office.

12. All tapes or videotapes produced by Mr. Thomason or any associates of his for the White House, the Bill Clinton for President Committee or the Clinton/Gore '92 Committee and all billings and financial statements relating to such work.

13. Any tapes, tape recordings, or videotapes of any kind related to the White House Travel Office matter, any employee of the White House Travel Office or any allegations of wrongdoing by any employee of the White House Travel Office or any air charter company doing business with the White House Travel Office.

14. Any documents, related to the Federal Aviation Administration, transportation, travel, GSA, procurement, contracting, the White House Travel Office operations or The White House Project or any efforts to use an outside source of funding to assist the White House staff.

15. All records related to Harry Thomason and/or Darnell Martens, all records related to ICAP, all records related to any Executive Orders connected with any changes in contracting or procuring or related to National Performance Review efforts.

16. All records of all contacts and communications with anyone in the White House Counsel's office, Mack McLarty, Bruce Lindsey, Harold Ickes, Mark Gearan, Webster Hubbell, Susan Thomases, James Lyons, Harry Thomason, Mike Berman, Darnell Martens, John Podesta, Betsey Wright, Todd Stern, Maggie Williams, Patsy Thomasson, Bruce Overton, Catherine Cornelius, Clarissa Cerda,

George Stephanopoulos, David Dreyer, David Watkins or Jeff Eller from June 1, 1995 to present.

17. All calendars from May 1, 1993 to July 31, 1993 indicating any meetings, messages or discussions with any of the following individuals: Bill Kennedy, Vince Foster, Mack McLarty, Ricki Seidman, John Podesta, Todd Stern, Dwight Holton, Andre Oliver, Brian Foucart, Bruce Lindsey, Jack Kelly, Matt Moore, Beth Nolan, Cliff Sloan, Bernard Nussbaum, David Watkins, Catherine Cornelius, Jennifer O'Connor, George Stephanopoulos, Dee Dee Myers, Clarissa Cerda, Jeff Eller, Patsy Thomasson, Mark Gearan, Leon Panetta, Harry Thomason, Darnell Martens, Susan Thomases, Webb Hubbell, Linda Bloodworth-Thomason, Larry Herman (or any other KPMG partner or employee), James Lyons and Maggie Williams.

18. All phone logs and message slips for the same named individuals in paragraph #17 above, making or receiving calls from any of the same named individuals from May 1, 1993 through July 31, 1993.

19. All records relating to any complaints against David Watkins for sexual harassment or inappropriate actions by any employee, volunteer or contractor for any Clinton campaign or the White House office. (For any complaints from the White House office beginning on January 20, 1993 and thereafter.)

20. All records relating to the "Watkins memo" found in Patsy Thomasson's files on December 29, 1995 and produced to the Committee on January 3, 1996 and all records of any contacts, communications, or meetings related to the finding of this memo.

21. All records relating to the matter of *United States of America* v. *Billy Ray Dale* and any investigation related to the Justice Department investigation of the White House Travel Office matter.

22. All records detailing any alleged wrongdoing by any employee of the White House Travel Office and all records of any communications or contacts to that effect.

23. All records relating to Travel Office records and funds being placed in a military office safe.

24. Any records relating to any of the above requests that you have maintained at any time outside the White House or in any storage facility.

MANNER OF PRODUCTION

Please provide a document production log for all documents produced, identifying the document, identifying the handwriting of any notes or notations, identifying where this document comes from. In addition, please indicate for each item requested if you know of any document which you know to have existed but you no longer have access to or it has been destroyed. For any documents which have been destroyed please identify the document and who destroyed it.

WILLIAM F. CLINGER.

DISSENTING VIEWS

SUMMARY

The failure of the Committee to provide any semblance of fundamental due process and fairness, as well as its refusal to make any effort to accommodate the interests of the Executive Branch, not only renders H.Res. invalid, but also demonstrates a blatant contempt for the rule of law, and a repugnance to our Constitutional democracy. The willingness of the Majority to deprive three individuals of their personal liberty for transparent political goals demeans the Constitutional authority of Congressional oversight. For these reasons we strongly oppose the resolution.

From January 5, 1996 through February 7, 1996, the Committee sent out 36 subpoenas regarding the White House Travel Office matter. On January 5, 1996, the Committee sent a subpoena to David Watkins. On January 11, 1996, the Committee sent a far-reaching and broad subpoena to the Custodian of Records at the White House Office of Administration and a similar subpoena to the Custodian of Records at the Executive Office of the President. Both subpoenas were received by Jane C. Sherburne. On February 6, 1996, the Committee sent a subpoena to Matthew Moore.

In correspondence to the Committee, John Quinn, Counsel to the President, has raised significant issues of privilege regarding three categories of documents subpoenaed from the White House. Mr. Quinn argued that (1) turning over these documents to the Committee would chill the deliberative process of the President's Counsel and the President's closest advisors, (2) the documents requested are not pertinent to the Committee's investigation, and (3) the Committee has refused any effort to reach an accommodation on these documents.

David Watkins and Matthew Moore have both argued that a limited number of draft documents in their possession are covered by attorney-client and attorney work product privileges.

Despite numerous requests over a three month period by the President's counsel to resolve all remaining White House Travel Office issues, the Chairman has made no effort to accommodate the concerns of the Executive Branch. On the other hand, Mr. Quinn has made several reasonable proposals to provide the Committee with access to confidential documents in order to accommodate the legitimate needs of the Committee.

Chairman Clinger has refused the request of the Ranking Minority Member, Cardiss Collins, to have a hearing on these important and complex issues before voting on the contempt citation. Such a hearing is not only legally required, but would have helped Members to resolve the legal and factual issues in dispute.

The Committee never considered or specifically overruled claims of privilege before approving the contempt resolution, never specifi-

cally informed the subjects of the contempt resolution that their claims of privilege had been overruled, and never ordered them to comply with the Committee's determination prior to approving the contempt resolution.

The real motivation of this contempt resolution is a carefully orchestrated effort by the Republican leadership to embarrass the President in the closing months of this election year. Specifically, the resolution is in response to a memorandum from Representatives Bob Walker and Jim Nussle to all House Full and Subcommittee Chairmen dated April 23, 1996. That memorandum follows:

Memorandum

To: All House Full and Subcommittee Chairmen.
From: Bob Walker and Jim Nussle.
Subject: Request for information—URGENT.
Date: April 23, 1996.

On behalf of the House Leadership, we have been asked to cull all committees for information that you already have on three subjects listed below. We are compiling information for packaging and presentation to the Leadership for determining the agenda. You are a tremendous source for this project. The subjects are:

Waste, Fraud and Abuse in the Clinton Administration
Influence of Washington Labor Union Bosses/Corruption
Examples of Dishonesty or ethical lapse in the Clinton Administration

Please have your staff review pertinent GAO reports, Inspector General reports or committee investigative materials or newspaper articles for departments and agencies within your jurisdiction that expose anecdotes that amplify these areas.

Send your material to Ginni Thomas at H–226, U.S. Capitol or fax it to 6–1116. We need this information as soon as possible—no later than close of business on Friday, April 26.

On May 2, 1996, only nine days after the Republican leadership issued this memorandum, the Committee Chairman announced the scheduling of a full committee meeting for May 9, to consider the contempt resolution. There was no consultation with the Minority Members of the Committee or the White House about the contempt resolution before sending out the Committee meeting notice on May 2. The failure to even consult with the Minority Members of this Committee about an issue of such importance strongly suggests that this resolution was politically motivated.

Failure of the Committee To Attempt Any Accommodation With the Executive Branch Is a Fatal Flaw

Between January 11 and February 26, 1996, the White House sent to the Committee 28,000 pages of documents. However, because of the enormous breadth of the subpoena, there were a number of confidential and sensitive documents covered by the subpoena. In order to provide the Committee with access to those confidential documents, John Quinn presented a proposal to Chairman Clinger. That proposal is contained in a February 26, 1996, letter from John Quinn to Chairman Clinger. In that letter Mr. Quinn stated:

> As you know, the nature of this internal deliberative material was the subject of discussion at our February 15, 1996, meeting. At that meeting we described the materials we are prepared to have you or your staff review *in camera* and those that we are seeking your agreement to withhold altogether. This material is limited to (1) documents related to the ongoing criminal investigations of the Independent Counsel; (2) materials created in the course of preparation for Congressional hearings; (3) materials prepared in responding to this and other Congressional subpoenas; (4) White House Counsel vetting notes, staff meeting notes, and a subpoenaed legal analysis document unrelated to the Travel Office issues; and (5) personnel records which are of the type that are subject to the Privacy Act. *We understand that you are considering our positions and the concerns which support them. This material is not included in this production.* (Emphasis added)

Unfortunately, Chairman Clinger never responded to this proposal.

By February 26, the White House had virtually completed its document response to the Committee. As John Quinn stated in his letter of February 26 to Chairman Clinger:

> As you are aware, we have made a number of interim productions and have already provided the Committee with 28,000 pages of documents, including over 17,000 pages provided since January 22, 1996. We believe, with this production, the White House will have virtually completed its response to this subpoena. *Given the breadth of the subpoena, of course, we may find additional documents. Should this occur, we will provide them to the Committee promptly.* (Emphasis added)

Consistent with Mr. Quinn's promise to Chairman Clinger in his letter of February 26, to turn over to the Committee any additional documents uncovered, on March 4, 8, and 15, the White House sent to the Committee three very small supplemental productions of documents. However, inexplicably Chairman Clinger responded by sending a letter to Mr. Quinn dated March 20, 1996, critical of Mr. Quinn for uncovering additional documents. Chairman Clinger stated in his letter:

> Indeed, the February 26, 1996, production was to have been the final production except for the documents being held in suspension. In spite of this assurance, your March 15, 1996, production included still more responsive documents which clearly did not fall within your privileged categories. It is clear that we need to come to closure on all outstanding subpoenaed documents.

On March 21, 1996, John Quinn wrote a letter to Chairman Clinger restating what Mr. Quinn made clear in his February 26 letter to Chairman Clinger, that if additional documents were uncovered he would ensure that they were turned over to the committee:

> I thus made absolutely clear to the Committee that we would continue to work to confirm that there were no further responsive documents and that should we locate any further material, we would promptly provide it to the Committee.

In that same letter Mr. Quinn renewed his request to Chairman Clinger to work out a compromise on the issues of privilege:

> I look forward to discussing further with you the quite separate matter of our privileged documents. The issues raised with regard to those documents, of course, have nothing to do with either the discovery or the production of the letter about which you wrote me.

Chairman Clinger once again never responded to Mr. Quinn's efforts to reach a compromise on this issue. This was the second time that Chairman Clinger ignored a direct request from Mr. Quinn to resolve the outstanding issues of privilege.

On March 26, Chairman Clinger wrote to John Quinn and asked him to explain why the White House had instructed Mr. Craig Livingstone, Director of White House Personnel Security, to invoke executive privilege at a staff deposition taken on March 22, 1996. On March 27, Mr. Quinn wrote back to Chairman Clinger and explained that the White House did not instruct Mr. Livingstone to invoke executive privilege and that Mr. Livingstone did not invoke executive privilege as far as he could determine. In that same letter Mr. Quinn for the third time asked Chairman Clinger to resolve the issues of privilege:

> As you know, we have had preliminary discussions about resolving White House privileges in the course of this part of the Committee's investigation; but as of yet we have not had the opportunity to resolve that issue. I hope we will be able to meet soon to address that issue.

Without ever responding to John Quinn's third request to work out an accommodation on the issues of privilege, on May 2, 1996, Chairman Clinger sent a letter to John Quinn informing him that a Committee meeting was scheduled for May 9, to vote a resolution of contempt against him unless all White House documents were turned over to the Committee by close of business on May 8, 1996.

In a letter dated May 2, 1996, Ranking Minority Member, Cardiss Collins wrote to Chairman Clinger indicating that she disagreed with the decision to seek a contempt resolution because Chairman Clinger had not attempted any accommodation with the White House. In addition Rep. Collins specifically requested a hearing before proceeding with the contempt resolution:

> In order for the Committee Members to have an understanding of all issues involved in this resolution, I request a hearing on this matter prior to any committee vote on this resolution. Fundamental due process and basic fairness require that each of the individuals who are identified in the resolution should be allowed to testify on the issue, and present their case. To suggest that individuals have willfully refused to comply with a Congressional subpoena and should be considered in contempt of Congress is a seri-

ous charge. At a minimum, they deserve to be allowed to provide the committee with their testimony on the issue.

In a May 3,1996, letter to Chairman Clinger, John Quinn again attempted to resolve the matter. In that letter, he clarified the three areas of confidential documents that the White House had provided to the Committee:

1. Documents relating to ongoing grand jury investigations by the Independent Counsel;
2. Documents created in connection with Congressional hearing(s) concerning the Travel Office matter; and
3. Certain specific confidential internal White House Counsel office documents including "vetting" notes, staff meeting notes, certain other counsel notes, memoranda which contain pure legal analysis, land personnel records which are of the type that are protected by the Privacy Act.

In that same letter John Quinn pointed out that the material for which the Committee was threatening contempt went far beyond events relating to the Travel Office matter itself. He also, once again, renewed his request to reach an accommodation on this issue.

On May 3, 1996, Chairman Clinger wrote a letter to Ranking Minority Member Collins denying her request for a hearing to resolve the privilege issues.

On May 6, 1996, Chairman Clinger wrote a letter to John Quinn refusing to discuss any accommodation or compromise and merely demanded all of the documents.

On May 6, 1996, John Quinn again wrote to Chairman Clinger offering to resolve these issues:

> My offer to work with you to reach a compromise stands. I believe we have not exhausted the opportunities for accommodating the Committee's needs consistent with the President's interest in protecting confidential White House communications. For example, I gather from news reports that you are particularly concerned abut material related to the IRS and FBI inquiries. To the extent we have such documents, I am prepared to discuss making them available to you.

On May 7, 1996, Chairman Clinger wrote back to John Quinn and once again rejected his offer to reach any compromise.

On May 8, 1996, Chairman Clinger finally agreed to a meeting with Congresswoman Cardiss Collins and John Quinn. At that meeting Mr. Quinn presented a new proposal. He outlined the confidential documents that he was prepared to allow committee staff to review; he offered to produce a privilege log and provided a strict timetable by which all of this material would be available. Chairman Clinger agreed to consider Mr. Quinn's offer.

Within an hour after that meeting Chairman Clinger wrote to Congresswoman Collins rejecting Mr. Quinn's latest offer and refusing any compromise. He also invited Mr. Quinn to submit his views on the issue of executive privilege to the Committee.

On May 9, Mr. Quinn wrote back to Chairman Clinger to explain his objections to providing the Committee with the three categories of documents. In that letter he also renewed his interest in reach-

ing an accommodation with the Committee. In the final paragraph of his letter Mr. Quinn wrote:

> As always, I remain willing in the meantime to discuss this matter with you so that the legitimate needs of the Committee and the interests of the White House can be met.

One final time Chairman Clinger did not attempt any accommodation with the White House.

LEGAL ISSUES

A. Executive privilege

The Supreme Court has recognized that the Constitution gives the President the power to protect the confidentiality of Executive Branch deliberations. See generally *Nixon* v. *Administrator of General Services,* 433 U.S. 425, 446–455 (1977). Once this privilege has been asserted courts consider it presumptively valid, requiring the courts and Congress to articulate a specific reason why it needs each disputed document. *United States* v. *Nixon,* 418 U.S. 683.

This power is independent of the President's power over foreign affairs, national security, or law enforcement; it is rooted in "the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision making." *United States* v. *Nixon,* 418 U.S. at 708. As Chief Justice Burger stated:

> the expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately (id. at 708).

Chief Justice Burger went on to explain why executive privilege extends to the President's advisors:

> * * * [a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately (id. at 708).

The United States Court of Appeals for the District of Columbia Circuit has explicitly held that executive privilege is applicable to Congressional demands for confidential information. See *Senate Select Committee on Presidential Campaign Activities* v. *Nixon,* 498 F. 2d 725 (D.C. Cir. 1974) (*en banc*). In that case the court of appeals rejected a Senate committee's efforts to obtain tape recordings of conversations in President Nixon's offices. The court held that the tapes were constitutionally privileged and that the committee had not made a strong enough showing to overcome the privilege.

In a memorandum dated June 19, 1989, by William P. Barr, former Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, Mr. Barr further explains why the doctrine of executive privilege has even greater application when Congress has subpoenaed documents. Mr. Barr on page 5 states:

> The possibility that deliberations will be disclosed to Congress is, if anything, more likely to chill internal debate among Executive Branch advisers. When the Supreme Court held that the need for presidential communications in the criminal trial of President Nixon's close aides outweighed the constitutional privilege, an important premise of its decision was that it did not believe that "advisers will be moved to temper the candor of their remarks by the infrequent occasions of disclosure because of the possibility that such conversations will be called for in the context of a criminal prosecution." By contrast, congressional requests for Executive Branch deliberative information are anything but infrequent. Moreover, compared to a criminal prosecution, a congressional investigation is usually sweeping; its issues are seldom narrowly defined * * * For all these reasons, the constitutional privilege that protects Executive Branch deliberations against judicial subpoenas must also apply, perhaps even with greater force, to Congress" demands for information.

Courts have also made it clear that when the Congress has a legitimate need for information and the Executive Branch has a legitimate need to keep information confidential the doctrine of executive privilege requires each Branch to accommodate the needs of the other. In *United States* v. *American Tel. & Tel. Co.,* 567 F.2d 121, 127,130 (D.C Cir. 1977) the court said:

> The framers * * * expected that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.
>
> Because it was a deliberate feature of the constitutional scheme to leave the allocation of powers unclear in certain situations, the resolution of conflict between the coordinate branches in these situations must be regarded as an opportunity for a constructive *modus vivendi,* which positively promotes the functioning of our system. The Constitution contemplated such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.

Congress and the Executive Branch must both justify their specific need for documents. Assistant Attorney General Barr explains this requirement in his memorandum of June 19:

> the process of accommodation requires that each Branch explain to the other why it believes its needs to be legitimate. Without such an explanation, it may be difficult or impossible to assess the needs of one Branch and relate them to those of the other. At the same time, requiring such an explanation imposes no great burden on either Branch. If either Branch has a reason for needing to obtain or withhold information, it should be able to express it.
>
> The duty of Congress to justify its request not only arises directly from the logic of accommodation between the two Branches, but it is established in the case law as well. In *United States* v. *Nixon,* the Supreme Court emphasized that the need for evidence was articulated and specific.

Thus under relevant case law, the Committee is Constitutionally required to make a principled effort to acknowledge and if possible meet the legitimate needs of the Executive Branch. In order to meet this requirement the Committee must articulate to the White House a specific need for the documents requested. It is not enough for the Committee to assert, as it has in this case, that the three categories of documents withheld by the White House are relevant to the Committee's investigation.

As we indicated earlier, the White House has made several reasonable proposals to accommodate the needs of the Committee. One of those proposals was to permit Chairman Clinger or his staff to review *in camera* some of the withheld documents. Chairman Clinger rejected this proposal. Ironically, in *United States* v. *Nixon,* 418 U.S. at 706, Chief Justice Burger said that *in camera* inspection is exactly the type of accommodation required by the Constitution.

B. Committee must consider, and specifically rule on an individual's objections, and then require the individual to produce documents, before a congressional contempt resolution is ripe

Since contempt of Congress under 2 U.S.C. § 192 is a criminal matter, courts have required the highest level of intent and due process. Under 2 U.S.C. § 192, a person who has been "summoned as a witness" by a committee to appear to testify or to produce documents and who fails to do so, or who appears but refuses to respond to questions, is guilty of a misdemeanor, punishable by a fine of up to $1,000 and imprisonment for up to one year.

In *Quinn* v. *United States,* 349 U.S. 155 (1955), the defendant was convicted in the United States District Court for the District of Columbia of refusing to answer a question asked by a subcommittee of the Committee on Un-American Activities of the House of Representatives under 2 U.S.C. § 192. The Supreme Court held that the defendant could not be convicted since the committee had not overruled his objection to the question asked and specifically directed him to answer.

The Supreme Court in *Quinn* made it clear that under 2 U.S.C. § 192 contempt cannot be sustained unless the failure to produce documents is a willful and intentional act. The Court stated:

> * * * a clear disposition of the witness' objection is a prerequisite to prosecution for contempt is supported by long-standing tradition here and in other English-speaking nations. In this country the tradition has been uniformly recognized in the procedure of both state and federal courts. It is further reflected in the practice of congressional committees prior to the enactment of § 192 in 1857: a specific direction to answer was the means then used to apprise a witness of the overruling of his objection. Against this background § 192 became law. No relaxation of the safeguards afforded a witness was contemplated by its sponsors (id. at 167, 168).

The Court in *Quinn* went on to explain one of the fatal defects with the subcommittee's attempt to hold the witness in contempt under 2 U.S.C. § 192:

> At no time did the committee specifically overrule his objection based on the Fifth Amendment; nor did the committee indicate its overruling of the objection by specifically directing petitioner to answer. In the absence of such committee action, the petitioner was never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt. At best he was left to guess whether or not the committee had accepted his objection (p. 166).

As the Supreme Court in *Quinn* makes clear, in order to determine whether the failure to produce documents is willful courts have required committees of the Congress to ascertain the grounds relied upon by a person for refusing to turn over documents. The committee must then clearly rule on the objection. If the committee overrules the objection and requires the production of documents, it must instruct the person that his continued refusal to turn over documents will make him liable to prosecution for contempt of Congress. If a committee fails to adequately apprise a person that the documents are required, notwithstanding his objection, the element of deliberateness necessary for conviction for contempt under 2 U.S.C. § 192 is lacking and such a conviction cannot stand. *Emspak* v. *United States,* 349 U.S. 190 (1955)

i. Committee hearing required before resolution of contempt

The courts have held that the process for specifically ruling on a person's objections and claims of privilege requires a hearing before the person is held in contempt of Congress. In *United States* v. *Bryan,* 339 U.S. 323, the respondent was the executive secretary and had custody of the records of an association which was under investigation by the Committee on Un-American Activities of the House of Representatives. The Committee issued and served upon the respondent a subpoena directing her to produce before the Committee, at a stated time, specified records of the association. The respondent appeared before the Committee, but refused to

produce the records on the ground that the Committee was without constitutional right to demand them. The Supreme Court spelled out the hearing requirement in its ruling:

> The offense of contempt of Congress, with which we are presently concerned, on the other hand, matures only when the witness is called to appear before the committee to answer questions or produce documents and willfully fails to do so. Until that moment he has committed no crime. There is, in our jurisprudence, no doctrine of "anticipatory contempt" (id. at p. 341).

In Deschler's Precedents, Volume 4, Chapter 15, section 17, there is a brief discussion of procedures leading up to a contempt citation. There is a general recognition that such proceedings do not require a trial by the Congress. The Parliamentarian makes a note in Footnote 7. It states:

> In *Groppi* v. *Leslie,* 404 U.S. 496 (1972), a decision which reviewed an action of the Wisconsin legislature but nonetheless rested on congressional precedents, the U.S. Supreme Court held that a witness may not be punished for contempt unless he has been accorded due process of law in a proceeding that leads to a finding of guilt. *Although a legislative body does not have to accord all the procedural rights that a court must accord, it must grant notice and an opportunity for a hearing.* (Emphasis added.)

ii. Committee must specifically determine whether a subpoenaed document is pertinent before voting a resolution of congressional contempt

Federal courts have held that 2 U.S.C. § 192 requires a showing of pertinency. The United States Court of Appeals for the Third Circuit in the case of *United States* v. *Orman,* 207 F.2d 148 (3rd Cir. 1953), explains the pertinency requirement in Section 192:

> * * * two separate elements must appear before pertinency is established: (1) that the material sought or answers requested related to a legislative purpose which Congress could constitutionally entertain; and (2) that such material or answers fell within the grant of authority actually made by Congress to the investigating committee * * * (id. at 153).The Supreme Court in the case of *Watkins* v. *United States,* 354 U.S. 178 (1954), explains the manner in which the issue of pertinency in 2 U.S.C. § 192 should be resolved. Once a witness has objected to the pertinency of a question, there is no 2 U.S.C. § 192 offense unless the Chair will "state for the record the subject under inquiry and the manner in which the propounded questions are pertinent thereto" (Id. at 214–215).

The mere fact that the committee was engaged in a legitimate investigation within the committee's jurisdiction does not make the specific subpoenas valid in every instance. As the Supreme Court stated in *Gibson* v. *Florida Legislative Investigation Committee,* 372 U.S. 539, 545 (1963) "validation of the broad subject matter under investigation does not necessarily carry with it automatic and

wholesale validation of all individual questions, subpoenas, and documents demands." Thus, before the committee can adopt a contempt resolution, the committee must resolve the specific issue of pertinency if that issue has been raised.

iii. The Kissinger case

One of the justifications used by Chairman Clinger for not holding a hearing prior to voting a contempt resolution is the contempt citation to former Secretary of State Henry Kissinger. In his opening statement Chairman Clinger stated:

> We are by no means rushing matters here. By way of example, in a matter where Secretary of State Kissinger was subpoenaed for documents pertaining to national security, the Committee met two days after the return date of the subpoena and voted Mr. Kissinger in contempt despite his assertion of Executive Privilege.

The Kissinger case can be distinguished from the contempt resolution against John Quinn on several scores. First, there is no indication that Secretary Kissinger ever raised an issue of the pertinency of the Select Committee's document request. Second, neither Secretary Kissinger nor any other Member of the Select Committee on Intelligence ever asked for a hearing to resolve the issue of executive privilege or pertinency. Third, the issue never went to the courts to determine if a hearing was required since the issue was resolved when Secretary Kissinger gave the Select Committee on Intelligence an oral briefing on the issue of the Reagan Administration's covert activities.

C. Committee never specifically overruled claims of executive privilege as required by law

In a letter to John Quinn dated May 7, 1996, Chairman Clinger, two days before the Committee had scheduled a meeting on the contempt resolution, invited John Quinn to submit a written statement to the Committee of any valid executive privilege claims:

> I invite you to submit a written statement of any valid executive privilege claim which you wish to present to the Committee as to why you should not be held in contempt of Congress under 2 U.S.C. § 192 and § 194 for failure to produce properly subpoenaed documents in your possession, custody and control.

On May 9, 1996, John Quinn submitted the requested statement in the form of a letter to Chairman Clinger. In that letter, Mr. Quinn raised three major objections to the contempt resolution: (a) the Committee had not attempted to reach any accommodation with the Executive Branch; (b) the documents withheld from the Committee were not pertinent to the Committee's investigation; (c) the documents were subject to a claim of executive privilege.

With regard to the issue of executive privilege, Mr. Quinn in the May 9 letter once again categorized the three types of documents at issue:

> 1. Documents relating to ongoing grand jury investigations by the Independent Counsel;

2. Documents created in connection with Congressional hearing(s) concerning the Travel Office matter; and

3. Certain specific confidential internal White House Counsel office documents including "vetting" notes, staff meeting notes, certain other counsel notes, memoranda which contain pure legal analysis, and personnel records which are of the type that are protected by Privacy Act.

Chairman Clinger in his opening statement on the day of the hearing, never discussed the claims of executive privilege regarding White House documents relating to the grand jury investigation by the Independent Counsel and he never discussed the documents created in connection with Congressional hearings concerning the Travel Office matter. He only discussed internal White House Counsel office documents. On page 3 of Chairman Clinger's statement he said:

> I find it difficult to understand how documents related to the White House Travel Office scandal somehow arise to a "substantial question of executive privilege. Certainly disclosure of these documents could not impair the national security or the conduct of foreign relations. Nor will the performance of the Executive Branch's constitutional duties be impaired by the President keeping his own pledge of three years ago to get to the bottom of this matter.

This statement can be contrasted with Chairman Clinger's statement regarding the claims of attorney-client privilege made by David Watkins and Matthew Moore. On page 9 of Chairman Clinger's prepared statement he stated: "Neither Mr. Watkins nor Mr. Moore have a valid attorney-client privilege claim for withholding any of these documents." While we believe that overruling this claim of privilege at a meeting to vote contempt is legally insufficient, at least the Chairman specifically ruled on the claim of attorney-client privilege. However, he never ruled on any of the privilege issues raised by Mr. Quinn.

According to the court decisions discussed above, the Committee has a legal responsibility to rule on each claim of privilege. The Committee must specifically inform Mr. Quinn that his claims of privilege have been overruled. The Committee must then instruct Mr. Quinn that he must comply with the Committee's determination to overrule his claims of privilege and turn over all subpoenaed documents. However, the Committee never overruled Mr. Quinn's objections and never instructed him to comply with the Committee's determination.

D. The committee never considered the pertinency of documents withheld by the White House

Mr. Quinn in his letter to Chairman Clinger dated May 9, raised the issue of whether the subpoenaed documents are pertinent to the Committee's investigation. He stated on page 3 of that letter:

> My letter stressed that "the materials that the Committee is demanding, and threatening contempt for not producing, go far beyond events relating to the Travel Office

> matter itself." I pointed out that "in so doing, the Committee presumes to ask for, among other things, our internal preparation for Congressional hearings you yourself have called, our private communications with Members and staff of this Committee, as well as our response to the [ongoing investigation] of the Independent Counsel."

The Chairman did not even bother to discuss Mr. Quinn's pertinency objection. The Chairman certainly has never in any way overruled Mr. Quinn's objections.

A careful review of Chairman Clinger's opening statement at the October 24, 1995 hearing on the Committee's White House Travel Office investigation makes it clear that Mr. Quinn has a reasonable claim that the information withheld by the White House is not pertinent to the Committee's investigation. In his opening statement the chairman defined the scope of the Committee's investigation:

> The committee is meeting today to hear testimony on the firings of the entire staff at the White House Travel Office in May 1993, and related events leading up to their firings, the individuals prompting these firings, the appropriateness of the actions taken, possible conflicts or ethical violations that occurred, the subsequent investigations of these maters, and the levels of candor and cooperation by those involved in both responding to the investigations and conducting the investigations (TR. p. 3).

It is difficult on its face to see how the three categories of documents withheld by the Administration are pertinent to the Committee's investigation as defined by the Chairman of the Committee. At a minimum, the Committee has a legal responsibility to consider the objection by the White House that the documents are not pertinent.

As was the case with executive privilege, the Committee never held a hearing to specifically consider or rule on Mr. Quinn's claim that the requested documents were not pertinent to the Committee's investigation. Without such a hearing to consider and resolve the issue of pertinency, the contempt resolution is invalid. Moreover, since the Committee did not take the time to sort out whether any of Mr. Quinn's concerns were valid, if any of the Committee's demands are invalid, then there is no contempt. See *United States* v. *McSurely,* 473 F.2d 1178, 1204 (D.C. Cir. 1972).

E. The contempt citation of Matthew Moore is deficient.

In a February 27, 1996, letter to Barbara Bracher of the Majority Committee staff from William T. Hassler, attorney for Mr. Moore, Mr. Hassler explains that Mr. Moore has been asked by Mr. Watkins to assert a claim of attorney-client privilege for three documents. In that letter, Mr. Hassler explains that pending adjudication of a claim of confidentiality, a lawyer must respect the asserted claim of privilege, if there is a colorable basis for asserting the privilege. Mr. Hassler restated this argument in a letter dated May 8, 1996, to Chairman Clinger.

Mr. Hassler argued that D.C. Bar Opinion No. 99 requires "an attorney to assert a claim of confidentiality pending adjudication of

the claim even where the existence of the attorney/client relationship is in question."

The fact that Chairman Clinger declares the attorney-client privilege invalid does not resolve the matter. The Bar Opinion cited by Mr. Hassler goes on to say that "the ethical obligation of the [attorney] is simply not to compromise his clients's position voluntarily, and that obligation continues until the relevant forum has resolved in the negative the question of the existence of the attorney/client relationship." Since Mr. Watkins may be facing criminal charges in the investigation of the Independent Counsel, it would appear that Mr. Moore could face ethical problems were he to disclose these documents prior to a determination by the courts. Mr. Moore is therefore being penalized not for any refusal to provide documents to the Committee, but rather for abiding by legal ethics which prohibit him from making the disclosure.

The Chairman's prepared statement did not even bother to address the Bar Opinion cited by Mr. Hassler, nor does the draft Committee report. Moreover, as far as we can determine, Mr. Hassler's letter did not appear to have been disseminated by the Majority to Committee Members. Certainly there have been no hearings at which testimony was taken on any facts in dispute.

The absence of any factual record or hearing suggests that the courts would be unlikely to give significant weight to the Chairman's ruling. Indeed, the question arises why a ruling by the Committee, with its partisan interest, should be given deference when the courts would have to make a second ruling in the Independent Counsel's investigation of Mr. Watkins. Mr. Moore is now left in the difficult position of balancing the vote of the Committee against the cannons of legal responsibility.

F. The contempt citation of David Watkins is deficient

Mr. Watkins asserted attorney-client and attorney work product privileges over draft copies of David Watkins' November 15, 1993 Memorandum For Counsel. In a letter to Chairman Clinger dated May 7, 1996, Robert Mathias, attorney for Mr. Watkins, provided the Committee with his legal and factual arguments in support of these privileges. On page three of Mr. Mathias' letter he states:

> Mr. Watkins retained Hogan & Hartson during the summer of 1993 to represent him in connection with certain matters including those relating to the White House Travel Office firings. An attorney-client relationship has existed between Mr. Watkins and Hogan & Hartson since then.
>
> In September, 1993, after Mr. Watkins had retained Hogan & Hartson, Mr. Watkins began to prepare a privileged and confidential document which detailed his responses to the various conclusions of the Internal White House Travel Office Management Review. The final version of that document is the November 15, 1993 Memorandum For Counsel signed by Mr. Watkins.
>
> Mr. Moore assisted in the preparation of the Memorandum For Counsel in two ways. First, Mr. Moore acted as a "scribe" for Mr. Watkins. Mr. Moore did the actual typing of some of the drafts of the document. Secondly, Mr. Watkins discussed with Mr. Moore, a lawyer, how to pre-

> pare the Memorandum For Counsel so that it would appropriately be considered privileged and confidential. At the time the document was prepared, Mr. Moore was an attorney on Mr. Watkins' staff at the White House Office of Management and Administration. The Memorandum For Counsel, however, was not prepared as part of the business of that office.
>
> In asking for Mr. Moore's assistance, Mr. Watkins had the good faith belief that the Memorandum For Counsel would be kept privileged and confidential and that Mr. Moore's assistance, and status as an attorney, would help preserve the privileged and confidential status of the document. Indeed, every draft copy of the Memorandum For Counsel contained, at the time of its creation, the legend "PRIVILEGED AND CONFIDENTIAL." Every copy, except the final version, bears the stamp "DRAFT."

Mr. Mathias goes on in his letter to cite extensive case law in support of Mr. Watkins' claim of attorney-client and attorney-work product privileges. For example, on page 5 of his letter to Chairman Clinger Mr. Mathias states:

> The determination regarding the existence of an attorney-client relationship and privilege depends upon the understanding and intention of the client. The attorney-client privilege attaches to confidential communications made to an individual in the genuine, even if mistaken, belief that the individual is an attorney. See *Wylie* v. *Marley Co.,* 891 F.2d 1463, 1471 (10th Cir. 1989) ("The professional relationship for purposes of the privilege hinges upon the belief that one is consulting a lawyer and his intention to seek legal advice."); *United States* v. *Mullen & Company,* 776 F. Supp. 620, 621 (D. Mass. 1991); *United States* v. *Tyler,* 745 F. Supp. 423, 424–24 (W.D. Mich. 1990) and *United States* v. *Boffa,* 513 F. Supp. 517, 523 (D. Del. 1981).
>
> Mr. Watkins genuinely believed that Mr. Moore's status as an attorney would help to preserve the privileged and confidential nature of the Memorandum For Counsel. Thus, even if one were to later conclude that Mr. Moore was not acting as Mr. Watkins' personal attorney during preparation of the Memorandum or Counsel, the privilege still applies.

As was the case with Matthew Moore, it does not appear that the Majority even disseminated Mr. Mathias' letter to the Members of the Committee. Chairman Clinger's prepared statement never discussed any arguments raised by Mr. Mathias. Therefore, the Committee Members approved a contempt resolution against David Watkins without the benefit of a hearing at which the facts of the case were presented concerning the relationship of Mr. Watkins and Mr. Moore. In addition, there was no hearing or briefing of the attorney-client and attorney-work product privileges being asserted by Mr. Watkins. Moreover, there appears to be little probative value in early drafts of an unsent memo, since changes could be

construed to mean that Mr. Watkins had disavowed the earlier contents.

Finally, it should be noted that Mr. Watkins appeared before the Committee and answered every question asked of him, which would indicate no intent to be in contempt of Congress.

G. Conclusion

Thus, the Committee's contempt resolution is invalid for several reasons. First, the Committee never attempted to reach any accommodation with the Executive Branch. Second, the Committee failed to articulate a specific need for the documents withheld from the Committee. Third, the Committee never considered and overruled objections to the resolution made by the Administration regarding pertinency and executive privilege. Finally, the Committee never held a hearing to consider the factual and legal issues in dispute.

These legal requirements are not optional. The Majority cannot simply disregard them because it does not suit their narrow political purposes. Our courts have determined that these fundamental protections are necessary to fairly accommodate the needs of the Executive, Legislative and Judicial Branches of our Government. These protections are also needed to shield the American people from an unchecked abuse of power.

AMENDMENTS TO THE RESOLUTION

We offered two amendments in Committee and attempted to offer a third before a motion for the previous question was interposed by the Committee majority.

(1) An amendment in the nature of a substitute offered by Rep. Waxman would have honored the requirements of law and precedent that a hearing be held prior to any House action to hold an individual in contempt. The Waxman amendment would have prevented the Speaker from certifying to the U.S. Attorney for the District of Columbia any report pursuant to 2 U.S.C. § 192 and § 194 until a hearing was held at which Messrs. Quinn, Watkins and Moore would have an opportunity to testify.

A hearing would have helped remedy one of several potentially fatal defects in the Committee's process, if it wished to proceed further with the contempt resolution. In the most recent contempt actions taken by the House during the 1980's, involving Secretary of the Interior James Watt (1982), EPA Administrator Anne Gorsuch (1982), and Joseph and Ralph Bernstein (1986), each individual subsequently cited for contempt was given, and accepted, the opportunity to testify at a subcommittee hearing.

The hearings provided an opportunity for the witnesses to explain their actions. It provided the committees an opportunity to decide whether an act of contempt—failure to answer questions, or to produce subpoenaed information—was committed in their presence, and buttressed their subsequent recommendations to the House to cite for contempt. Such a record is completely lacking in the current instance.

The failure to hold a hearing deprived the House, the U.S. Attorney, and a court, of information essential to any rational determination of criminal intent. It also deprived the named individuals of due process of law, as well as of any opportunity to convince the

Committee that its legitimate needs were, in fact, being met. A hearing would also have allowed the Committee to consider the President's concerns over his ability, and that of his successors, to receive advice from the White House Counsel and other sources. It might have precluded a claim of executive privilege.

(2) A second amendment in the nature of a substitute was offered by Ranking Minority Member Cardiss Collins and was intended to address the Committee's concern over the public's right to know both the issues in the Travel Office investigation and how the inquiry was being conducted. The amendment was also intended to address issues of comity in the disclosure of information between the Executive and Legislative Branches which the Committee ignored in its rush to judgment.

The Collins amendment would have required the Committee to produce the equivalent of what it was demanding from the White House—its own records and private communications related to the travel investigation, from May 19, 1993, to the present. The 1993 date was frequently cited by the Majority as the date of the beginning of Rep. Clinger's investigation of the Travel Office and has been erroneously used to assert that the White House has not complied "for years" with its requests for information. In fact, the Committee's requests for information began on May 30, 1995, and several follow-ups, followed by a subpoena on January 11, 1996. The White House has been continuously supplying information in response to all of these requests.

The data requested to be disclosed by the Collins amendment would have included all committee records of communications related to the White House Travel Office matter, including all letters, memoranda, notes of meetings, phone logs, e-mails, computer entries, video or audio tapes, calendars, press releases, diaries, telephone message slips, notes, talking points, journal entries, opinions, analyses, summaries and disks embodying communications among Members or staff of the Committee and communications with the Independent Counsel or staff of the Independent Counsel. Communications with House Leadership staff, the FBI, the Department of Justice, and Billy Ray Dale, the former head of the Travel Office, would have been included.

The purpose of the amendment was to require the same degree of disclosure by the Committee of materials that was being asked of the Executive Branch. At a minimum, such disclosure would have provided the public with detailed information about the manner in which the Committee was conducting its investigation. It might also have provided some guidance to the White House and other executive agencies, which were attempting to comply with broad and vague requests from the Committee, with some way to divine what the Committee's actual needs might be.

A Member of the Majority made a point of order that the amendment was not germane to the resolution, and the Chairman sustained that point of order.

(3) Rep. Barrett of Wisconsin subsequently sought to offer an amendment to require that legal fees of any individual cited in the contempt resolution be paid by the government, in the event that the individual is not found guilty of criminal contempt. However, the Chairman would not recognize Mr. Barrett, even though under

the practices and precedents of the House a Member of the Minority should have been recognized in turn. Instead, a Member of the Majority was recognized for a motion to move the previous question on the resolution, cutting off all debate and amendments. Its adoption by the Committee prevented the Barrett amendment from being considered.

ALTERNATIVES TO THE COMMITTEE'S ACTIONS: RESOLVING THE DISPUTE THROUGH CIVIL PROCEDURES

Chairman Clinger made clear his true purpose in pressing the criminal contempt resolution and rejecting any suggestions that a civil contempt alternative be considered—to manufacture a confrontation between the branches for political purposes. If the Majority truly desires a resolution on the question of the disputed documents, the criminal contempt process will not achieve that end.

Instead, in its determined and self-publicized pursuit of a constitutional crisis with the White House, the Majority has not only rejected the offer of an accommodation with the Executive, but has now also rejected the White House's alternative suggestion of seeking a civil enforcement alternative to resolve the dispute. The Majority simply declares that alternative unavailable.

The House's power under 2 U.S.C. § 192 to initiate a criminal contempt proceeding bears no relevant relationship to the issue of the White House's compliance with the Committee's subpoenas. Even in the unlikely event that the U.S. Attorney or, in the event of a referral, the Independent Counsel, were to prosecute the case in the Federal District Court for the District of Columbia, and in the even more unlikely circumstance that the House prevailed in court, victory would not provide the Committee with the documents demanded.

Criminal contempt could only impose a jail term on the individuals cited in the resolution. This might indeed provide new political fodder for the Majority's escalating attacks on the President, the First Lady and the White House staff, which are certain to become more desperate as the November election draws closer. However, abuse of the criminal contempt statute for publicity serves only to weaken the Committee's oversight process and further demeans the institutional authority of the House in securing access to Executive Branch materials to which it may legitimately be entitled in the future.

In choosing the route of criminal contempt, Chairman Clinger rejected several other potential options which might have provided a more direct route to the withheld documents.

(a) Enacting a Civil Contempt Statute.

The Senate possesses the authority, under 2 U.S.C. § 288d, to bring a civil action in Federal court to compel witnesses to obey committee subpoenas, i.e. the court would order the documents provided. The House did not include itself within the ambit of the statute, but there is nothing to prevent it from doing so now. Victory in such a suit could bring the Committee what it claims to want—the subpoenaed documents.

However, when this option was broached to Chairman Clinger by Counsel John Quinn and Mrs. Collins prior to the contempt hear-

ing, Chairman Clinger, in a written response to Mrs. Collins, stated:

> Proposing to amend the U.S. Code, through separate actions by the House, Senate, and the President, is wholly unreasonable.

Chairman Clinger provided no further arguments as to why this course was "wholly unreasonable." In fact, presuming that Chairman Clinger and the President agreed to this action, it would have been a relatively simple and quick process to approve such legislation through the unanimous consent of the Members of both bodies.

There is also precedent for congressional action authorizing a civil suit seeking enforcement of a specific congressional subpoena for Executive Branch documents, even on a "one-shot" basis. Public Law 93-190 was enacted specifically to allow the Senate Select Committee on Presidential Campaign Activities to bring suit to enforce its subpoenas against the Nixon Administration. The statute conferred jurisdiction on the Federal District Court for the District of Columbia to hear such cases. A similar statute authorizing the Committee on Government Reform and Oversight to bring such a suit could be enacted quickly.

(b) Civil Enforcement as an Alternative.

Yet another potential route toward the committee's expressed goals is a civil suit brought under existing law. There has been no definitive decision that civil contempt action cannot be brought under 28 U.S.C. § the "federal question" jurisdiction statute. Civil enforcement is not precluded in a situation where a House committee, with authorization by the full body, seeks a judicial determination of a claim of privilege by the Executive.

Federal courts have in the past rejected congressional efforts at civil enforcement of actions against the Executive Branch on the grounds that the cases must allege a monetary controversy of at least $10,000. (*Senate Select Committee on Presidential Campaign Activities* v. *Nixon,* 366F. Supp. 51, 1973). In the opinion, Judge Sirica, while dismissing the select committee's suit for lack of jurisdiction, noted:

> Where it desires to award jurisdiction over cases involving important rights without regard to a monetary valuation, the Congress is capable of excluding such restrictions.

However, the $10,000 requirement was subsequently repealed in 1980 (P.L. 96–486). In its report (H. Rpt. 96–1461), the House Judiciary Committee noted that use of a monetary limit "* * * ignores the fact that many important claims are incapable of economic valuation and it operates in total disregard of the importance, difficulty or far-reaching nature of the Federal claim at issue."

The Majority has misconstrued the decision in Senate Select Committee as somehow precluding jurisdiction on grounds other than the one jurisdictional requirement that the court found lacking. There is no textual support for such a position. The court did not find that Federal subject matter jurisdiction lacking for a civil enforcement action under section 1331; nor did the court find that such a dispute between the branches would necessarily present a

"political question" that was inappropriate for the Federal Judiciary to decide.

Quite the contrary, the D.C. Circuit indicated that absent the one jurisdictional defect, it was willing to entertain a civil action to resolve a conflict between a congressional subpoena for documents and a Presidential claim of executive privilege when the action was brought by a congressional committee. With the $10,000 requirement eliminated, there is no real or imagined statutory hurdle remaining that would prevent the Committee from proceeding to a civil resolution of this dispute.

While perhaps untested, there appears to be no precedent establishing that civil contempt actions cannot be brought to resolve subpoena disputes between the House and the Executive. Therefore, there is no basis for those who would argue that civil contempt is not available, or that if pursued it would be thrown out by the courts as a political question.

By rejecting suggestions that the Committee pursue civil contempt, Chairman Clinger made clear that the purpose of the resolution is not to obtain disputed documents but rather to gain political advantage. By choosing such a confrontational course of action, the Majority has gone a long way toward undercutting the very congressional institutional interests that it purports to uphold.

CARDISS COLLINS.
HENRY A. WAXMAN.
TOM LANTOS.
ROBERT E. WISE, JR.
MAJOR R. OWENS.
EDOLPHUS TOWNS.
JOHN M. SPRATT, JR.
LOUISE MCINTOSH SLAUGHTER.
PAUL E. KANJORSKI.
GARY A. CONDIT.
COLLIN C. PETERSON.
BERNARD SANDERS.
KAREN L. THURMAN.
CAROLYN B. MALONEY.
THOMAS M. BARRETT.
BARBARA-ROSE COLLINS.
ELEANOR HOLMES NORTON.
JAMES P. MORAN.
GENE GREEN.
CARRIE P. MEEK.
CHAKA FATTAH.
BILL K. BREWSTER.
TIM HOLDEN.
ELIJAH E. CUMMINGS.

DISSENTING VIEWS OF REPRESENTATIVE CARRIE P. MEEK

I come from an area where people do a lot of fishing, and I recognize a fishing expedition when I see one. This contempt resolution looks like a fishing expedition to me.

This resolution is not a search for criminal activity by members of the White House staff. That search is being conducted by the Independent Counsel.

This resolution is not a search for justice for the seven employees of the Travel Office who were fired in May 1993. The House voted three months ago, 350 to 43, to pay their legal expenses.

One can only conclude that this resolution is a fishing expedition in search of a new headline. The Republican leadership doesn't like the current headlines about "Extreme Republican Agenda Blocked by President Clinton." So it wants a new headline.

The new headline that the Republican leadership is probably looking for is "White House Coverup." But a more accurate headline is "White House Counsel Risks Jail to Protect the Constitution."

In the 1950's people risked going to jail to protect their constitutional rights from the attempts by Senator McCarthy to probe their political beliefs. In the 1960's and 1970's people risked going to jail to protect the constitutional principle that African-Americans should be treated the same as whites. Now the Republican leadership threatens Mr. Quinn with jail because he seeks to protect the constitutional integrity of the Office of the President.

This proceeding is a direct attack on the constitutional powers of the President. Article II section 2 of the Constitution authorizes the President to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." How can the President get candid written opinions if Members of Congress are going to rummage through them, looking for a potentially embarrassing word or phrase?

Would the Majority Committee staff be able to properly serve the Chairman of the Committee if every document they prepared were subject to scrutiny by the White House? The answer is clear. Yet the Majority seeks to impose a standard on the President that it is unwilling to impose on itself.

I dissent.

CARRIE P. MEEK.

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